UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 20 Cr. 160 (MKV)

SETH FISHMAN,

Defendant.

Trial

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New York, N.Y.
February 1, 2022
9:17 a.m.

Before:

HON. MARY KAY VYSKOCIL,

District Judge
-and a Jury-

APPEARANCES

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York
BY: ANDREW C. ADAMS
SARAH MORTAZAVI
ANDEN F. CHOW
Assistant United States Attorneys

SERCARZ & RIOPELLE, LLP
Attorneys for Defendant Fishman
BY: MAURICE H. SERCARZ
-and-
LAW OFFICE OF MARC FERNICH
BY: MARC A. FERNICH

ALSO PRESENT: KARLINE JUNG, Paralegal Specialist

(In open court; jury not present)

THE COURT: Good morning, everyone. We are going to assemble in the robing room to deal with the legal issue that we have to deal with, and then we'll be back here for summations. So I'll see you inside in a moment.

(Continued on next page)

(Pages 1191 through 1199 SEALED by order of the Court)

(Recess)

(In open court; jury not present)

THE COURT: Please be seated, everyone.

(Pause)

(Case called)

MR. ADAMS: Good morning, your Honor. Andrew Adams, Sarah Mortazavi and Anden Chow for the government.

THE COURT: Good morning.

MR. SERCARZ: For the defendant Fishman, Maurice Sercarz and Mark Fernich.

MR. FERNICH: Good morning, your Honor.

THE COURT: Good morning.

Good morning, ladies and gentlemen. The jurors are on their way up; so we'll be resuming momentarily.

(Pause).

(Jury present)

THE COURT: Good morning, ladies and gentlemen. Please be seated, everyone.

So good morning, everyone, and thank you again very much for your patience and understanding with the delays that we've had while we deal with some legal issues.

So we've reached the stage of the case where we're going to hear the summations, the closing arguments from the lawyers. The evidence is closed at this stage. The evidentiary record is closed, and I remind you that what the

lawyers say to you is not evidence.

It's simply the opportunity for the lawyers to point out to you the evidence that they think is particularly important and to present to you the arguments that they wish for you to consider during your deliberations.

It's your recollection of the evidence that controls, and I'm confident that you will give the lawyers your full attention during their arguments to you.

One further instruction I want to give you before we hear from the government. You may notice that the defendant, Dr. Fishman, is not present in the courtroom today. Please do not speculate as to why he's absent. Under the law, in these circumstances, we may proceed in his absence and that is what we are going to do. I instruct you not to draw any inference as to Dr. Fishman's guilt or innocence based on his absence.

All right. So we are ready to proceed with closing arguments. Ms. Mortazavi?

MS. MORTAZAVI: Thank you, your Honor.

Before we begin, if I could ask the jurors if they're seeing any image on their screens? They are? Okay. Very good.

Ladies and gentlemen, good morning. I want to start off by thanking you again for your patience over the course of this trial, and I'm thanking you on behalf of all the parties to this case.

THE COURT: And the Court.

MS. MORTAZAVI: And the Court. You've been listening to the testimony. You've been carefully weighing the evidence, and you've been listening and following the government's proof, and all of that tells you that you know what the defendant, Seth Fishman, is all about.

You know that the entire point of the defendant's business was to pedal adulterated and misbranded drugs, illegal performance enhancing drugs designed by him to cheat at horseraces. And you know that he did that all without getting caught; that he tried his best to hide what he was doing.

At the beginning of this trial, my colleague, Mr. Chow, asked you to use your common sense, and I'm going to ask you to do the same thing because your common sense tells you that when someone says that their drugs are meant to dope a horse, that's exactly what they mean.

(Audio recording played)

If someone says that they're trying to cheat the system, that's exactly what they're doing.

(Audio recording played)

And if someone says that their illegal drug distribution business is like a cocaine dealer smuggling cocaine, they know that what they're doing is wrong and illegal.

(Audio recording played)

The defendant made hundreds of drugs, drugs that were specifically designed by him to enhance horses' performance in a lot of different ways. He sold them to racehorse trainers and to others in the racehorse industry. He knew he wasn't supposed to sell them. He knew trainers weren't supposed to use them, and so he built his corrupt, multi-million dollar drug distribution business around deceit all so the defendant and his clients could avoid getting caught.

And this morning I'm going to walk you through the many ways in which the defendant tried his best to shield himself, shield his business and shield his clients from accountability because he knew that what he was doing was wrong and illegal.

During your deliberations, you're going to be asked to consider whether Seth Fishman is guilty of two counts. The first is whether the defendant participated in a conspiracy with a thoroughbred racehorse trainer called Jorge Navarro, or George Navarro. A conspiracy that had as its goal the distribution of adulterated and misbranded performance enhancing drugs in order to help Navarro dope his thoroughbred horses.

The second is whether the defendant participated in the conspiracy with others, apart from Navarro, that involved the distribution of the defendant's illegal performance enhancing drugs in order to help people in the racehorse

industry dope their Standardbred and Thoroughbred racehorses. And you will be asked whether he did both of those things with the intent to defraud or mislead.

Now, as the Court told you, Judge Vyskocil is going to instruct you on the law in the case. What I say this morning is not evidence, and it's not the law. Judge Vyskocil's instructions are going to control your deliberations.

But I expect that Judge Vyskocil will tell you that as to both of those counts, they contain the same elements. First, you'll have to consider whether there was an unlawful agreement; second, whether the defendant joined in that unlawful agreement; and, finally, whether one member committed some act to further the agreement.

Now, the goals of each conspiracy in Count One and Count Two are slightly different, as you're going to hear from Judge Vyskocil when she gives you your instructions. But here's what they have in common. In each case, what we're talking about are drugs, and not just drugs, drugs that are adulterated or misbranded or both.

You're going to be asked whether the defendant sent or received these drugs across state lines and out of the country. You're going to be asked whether he did something to adulterate and misbrand drugs that were already moving across state lines. And you'll be asked whether he did all that with the intent to defraud or mislead.

So this morning, I'm going to start in reverse order and talk to you first about Count Two. This is the conspiracy that centered around the defendant and his company, Equestology, and its employees, people like Lisa Giannelli or Lisa Ranger, people like Mary Fox, people who partnered with Equestology, like Jordan Fishman.

Now, there's a lot that's not in serious dispute about Count Two. First, there's going to be no real dispute here that what we're talking about here are drugs. You heard the testimony from Dr. Bowman. According to the FDA, it considers a substance either a food or a drug, and you know that these substances are drugs because of what they were intended to do.

Remember when Dr. Bowman went over the promotional material for Equestology? That's Government Exhibit 711. It described exactly what these drugs were intended to do, to affect the structure or function of an animal, to diagnose, treat or prevent disease. And you know that not just from this one exhibit but from everything you've heard over the course of this trial, from the defendant's own words when he was talking to clients, from what his main sales rep, Lisa Giannelli or Lisa Ranger, told to his clients. You know that from their calls, their e-mails, their text messages, even the drug names themselves. You also know that from the testimony of the expert witnesses, Dr. Bowman and Dr. Cynthia Cole, and you know that these are drugs because of your common sense.

What we're talking about are injectable medications, intravenous, IV, intramuscular, IM. We're talking about little vials that need a needle and syringe. We're talking about pills. We're talking about pastes. We're not talking about hay and oats and apples. So that's not going to be in serious dispute.

Now, you also know that these drugs are adulterated or misbranded or both, and that is not in serious dispute either. You remember the testimony from Dr. Bowman. She told you that an adulterated drug is one that is not approved by the FDA, and it is not generally recognized as safe and effective. Dr. Bowman took just a few of the hundreds of drugs that the defendant has produced and she told you not approved by the FDA, and looking at all the literature, not recognized as safe and effective.

So that part you know. But those drugs and others were also misbranded. There can be no real dispute that the drugs were misbranded either. Look at these labels. Dr. Bowman talked to you about what's missing on these labels; no correct manufacturer name, no manufacturer contact information, no indications, no list of ingredients, no active pharmaceutical ingredients, APIs, no adequate directions for use.

And for many of these drugs, which were injectables, that did require a prescription, they didn't have the required

prescription statement: Caution, federal law restricts this drug to use by or on the order of a licensed veterinarian. In other words, the information that all drugs that are legally distributed are required to have.

And, of course, you know that some of these drugs had no label at all, like BB3. It doesn't take an expert to see what's wrong here. All you have is a name. This is Seth Fishman's infamous blood builder drug, BB3, as in blood builder 3. Completely and utterly lacking in any information that the FDA would require; no ingredients, no directions, no manufacturer name, no warning, no prescription language.

And you know that the only way that they could identify these drugs with customers was to talk about them by cap color; blue caps and green caps. So your common sense tells you these drugs are misbranded.

And in addition to all of that, Seth Fishman and his companies and his partner were not registered with the FDA to manufacture drugs. The parties had already agreed to that. They agreed to that in the stipulation; so it's not in dispute. Everything that was made, even if it had been properly labeled, would still be misbranded because it was still produced by companies that didn't register with the FDA.

And, of course, as we're going to talk about over the course of this morning, many of these drugs required a prescription, but these drugs did not have a prescription.

Now, there's also no serious dispute that these drugs were moved across state lines. They were sent across there by the defendant and his co-conspirators. You know that Seth Fishman lived in Florida, that his office was in Florida. The defendant's main sales representative, Lisa, was located in Delaware. And the defendant's supplier, 21st Century, the company that made the defendant's illegal drugs, was located in Massachusetts.

So you know, at the very least, the drugs had to move among at least three places. But you also know that customers were located across the United States; Ohio, Pennsylvania, New Jersey, Illinois, including customers right here in the Southern District of New York -- that's the district that we're sitting in right now -- customers in Middletown, New York, in Orange County, customers in New York, New York, just a few minutes ride from where we're sitting today. So you also know that the defendant's crimes touched this district.

You also heard that the defendant's drugs were found at racehorse training centers in this district, at the Golden Shoe racehorse training facility in Montgomery, New York, drugs like GNRH and ACTH. You also know that drugs were found at the Mount Hope racehorse training center in Middletown, New York, in Orange County. So again, you know these drugs had to move across state lines, and you know that these drugs ended up in this district.

So again, there's no serious dispute about most of this conspiracy. The only point in serious dispute, what you're going to be considering during your deliberations, is whether the defendant did this all with the intent to defraud or mislead. And you know from all the evidence you heard over the course of this trial, from the very statements the defendant made in his own private phone calls, you know that when he joined in an unlawful agreement with others to create and distribute his illegal drugs, the very foundation of that agreement was built on deception.

Now there's no question that the defendant knew that his business was illegal. And the thing is, if you make and sell illegal drugs, people try to stop you unless you take steps to hide what you're doing. And that brings us to whether the defendant intended to defraud or mislead.

First, we're going to talk about who the defendant tried to defraud or mislead, and second, we're going to walk through the many ways you know how the defendant attempted to defraud or mislead people, to hide what he was doing, to avoid accountability. We're going to talk about how he created untestable drugs, how he siloed customers, that is, he created different product lines for different trainers to minimize the chances of any of his customers getting caught and having his business taken down, how he and his customers tried to avoid snitches, how he put misleading, false information on his

labels, and how Seth Fishman used his vet license as a shield.

So like I said, let's start by talking about the people that the defendant tried to defraud or mislead. The defendant knew that the FDA might stop him from selling illegal drugs to racehorse trainers. Remember, Seth Fishman had an FDA issue years ago. He talked about himself in a private conversation when the defendant didn't know that his phone was being wiretapped: I did have an FDA issue that nobody could figure out and it didn't get taken care of.

Again on that same call: He kind of gave me on the low down that it was an FDA complaint. Courtney -- that is Courtney Adams, the very first witness who testified at the trial, an Equestology employee -- Courtney got approached then Courtney told something to whatever and they approached one other person. And repeatedly a reference to an FDA thing.

And what did the defendant do in response? Well, he set up a corporation in Panama. Remember that recording that the defendant made himself and saved to his own iPad talking about setting up a Panamanian corporation to hide from the FDA? What happened? It was an FDA issue. It was an issue where I'm the U.S. -licensed doctor doing international, I didn't want an FDA issue. So I set it up as a shield against FDA, because then they say oh, it's a Panamanian corporation, they have no jurisdiction there, end of story.

That was Seth Fishman's business model, shielding

himself from anyone who could stop him.

He didn't stop there. He tried to get Courtney Adams to sign an NDA, a non-disclosure agreement, and even said why he did that, again in a recording that he created himself and saved to his own iPad: So if some kind of regulatory body comes to her, the beautiful thing is that she shows that piece of paper and she can't talk to that regulatory authority unless I'm there. That's how I protect everyone.

Even back in 2017, the defendant knew that the FDA could stop him. Remember this email? The defendant reached out to a compounder in the United States, someone who was legally doing business here, because he wanted one of his products, Pentosan, to be in his words, a hundred percent legitimate.

And he was told by this compounder in 2017 exactly what it would take: Two to three million dollars, five years, an entire dossier to CVM, that is the Center for Veterinary Medicine within the FDA. There's no question that the defendant knew what he was doing was illegal by manufacturing these drugs at his partner's warehouse in Massachusetts and doling them across the country. And he knew that the FDA could shut him down.

Not only that, the defendant knew he could be criminally charged for what he was doing. Look at this email sent to Seth Fishman from one of his co-conspirators, Geoff

Vernon. It's an email forwarding a newsletter with the headline at the very top: Veterinarian charged with plot to drug horses before races. He didn't even need to click on this article to understand what it was about. It says it right there in the body of the email. A Louisiana veterinarian has been charged with engaging in a scheme to influence the outcome of horseraces by illegally treating the animals with a synthetic version of the drug known as frog juice.

So the defendant knew what the law required. The defendant knew the consequences of getting caught and the defendant knew that the FDA might stop him, but the defendant also knew that customs might stop him, that they might seize one of his shipments that was going overseas. And you know that from his phone call with Jeff Gillis, a client who said he was in Canada. Gillis asks Seth Fishman whether he could ship to Canada and the defendant responded: Well, you can never anticipate what is going to go on. He doesn't like to guarantee that shipments can make it over the border because every time he says yes, it doesn't happen.

So Seth Fishman, knowing that there could be problems at the border, lied on customs forms. You know that from Courtney Adams' testimony. Look at their text messages, Government Exhibit 402H from the defendant's phone. On customs forms, Courtney Adams asked him how much to list as the value of a bleeder, and the defendant said 75 cents. Why? Well, she

told you: To keep the total commercial value under a certain limit.

So right here he's telling Courtney to list a shipment as worth approximately $700, which is a lie, because $700 doesn't sound like a whole lot. But you know that that was a lie because of what Seth Fishman actually charged for his bleeder products. Look at this list. We don't know exactly what drug they were talking about, but we do know that it was at least $12 and as much as $190 per bottle. The defendant lied because he knew that if he raised suspicions with overseas shipments, customs could stop him at the border.

And the defendant also knew that state drug regulators might stop him. Do you remember that complaint that we went over? It was a 2011 complaint filed with the Delaware Division of Professional Responsibility where these allegations are made against Seth Fishman, quote: "I am suspicious this veterinarian does not have a client-patient relationship, and I am positive the individual driving around farms selling drugs behind or under Dr. Fishman's name is not a licensed veterinarian. I'm concerned this veterinarian is not physically examining these animals and is in this medications sales the situation strictly for profit. She" -- meaning Lisa -- "is also dispensing medications that are not approved in the U.S., which could be an FDA violation."

And what did Seth Fishman do in response? He lied.

The defendant submitted a letter in response to the complaint with his notarized statement attached, and the letter said: Dr. Fishman physically examines all animals he treats. That was a lie.

The letter said: It is incorrect and professionally irresponsible to claim that Lisa sells drugs for Seth Fishman. That was a lie, too.

And what happened next? Well, you know from the parties' stipulation that the matter was referred to the Delaware Attorney General's office. And you know that that office decided not to move forward with charges. And you also know why. The defendant said it himself in a text message to Adrienne Hall. The veterinarian board had me investigated for BS. I spent $25,000 in legal fees and had a personal political favor called in to end the BS.

Because that's what the defendant did when he got caught. He lied, he fought, he pulled strings, he got out of it. And through it all, he learned that if state drug regulators get too close, they're going to stop him and stop his business.

And finally, the defendant knew that state racing regulators could stop him. Those are the agencies that that oversee horseracing in each state. Now you know the whole point of the defendant's business was to target racehorse trainers and others in the industry, and he knew that in the

industry racehorses are subject to drug testing. And if a horse tests positive, well, two things could happen: First, your client, the person who bought your drugs, might flip on you and turn you in; and second, even if they didn't, well, then that product would become known, and the agency could then create a test to detect what was previously a secret drug. If these racing commissions even found one of the bottles of Seth Fishman's drugs, they could reverse engineer a test to detect that drug on future drug screens. And if the product could be tested, well, then it was useless. It would defeat the purpose of cheating. It would defeat the purpose of Equestology.

And Seth Fishman knew that. Look at the email from June 2012 from Seth Fishman to Wisdom Veterinary Medicines with the subject: To keep you updated on latest testing.

Now the lesson here is that when a bottle is found with the product either labeled or easily identified, as it is by itself, things are very easy for the racing jurisdictions to make tests for. And in that same email: Trainers were found with bottles labeled Dermorphin and they basically let commission know exactly what to test for.

A few years later, 2015, when Lisa and the defendant discussed a client that wanted Equestology drugs sent to a racetrack, they laughed at the request.

Lisa: She wanted me to send this to the racetrack stable gate, I said absolutely not.

The defendant: Ask her why not send it to race commission office.

Lisa: LOL, I know.

Because it was a joke to think that their products were legal. It was a joke to think that the racing commissions would be okay with what they were selling.

So now we have talked about who the defendant had in mind when he was trying to conceal his activities. So let's spend some time on how you know that the defendant's goal was to defraud and mislead people. The core of Seth Fishman's business was to design performance-enhancing drugs that would not test positive on drug tests. How can you deceive racing commissions if horses test positive for PEDs that you are not allowed to use? How do you cheat if you're getting caught?

And you heard it from the trainers who testified at this trial, Adrienne Hall, Ross Cohen, Jamen Davidovich, a positive drug test to lead to a horse getting disqualified. A trainer could be fined or they could lose their license. And Equestology was built around the requirement that these drugs be untestable. Courtney Adams told you that. Equestology specialized in making performance products. For what purpose? For horses. Products that were untestable.

Seth Fishman described his business himself to a new potential client. Look at this email from 2018: As for doping, I make all my products non-testable. I have no other

clients looking for detectable know substances.

Seth Fishman didn't even bother trying to make drugs that could be caught on a drug test because what's the point if all your customers are trying to cheat? And of course, that's what his clients wanted. Look at this email between the defendant and a client where the client writes to confirm a phone conversation between the defendant and someone named Mansour. I gave you my mobile to talk to Mansour about the drugs that you could make so to not appear in tests.

Fishman talked about this with clients a lot. In 2017 a client asked Lisa: Does a particular drug test in PA? Meaning Pennsylvania. And the defendant responded: It will not test anywhere.

Another text message the year before in 2016, Ross Cohen, the trainer that you heard testifying at this trial, who told you that he used Seth Fishman's drugs to dope his horses. He reached out about a particular drug to see if it would test, and Seth Fishman said: Half, but it tests.

So you know it's at the core of the business. It's plain as day. One of the ways Seth Fishman tried to defraud and mislead people was by creating these untestable drugs.

And I want to spend just a minute talking about that word "untestable or the words "not testable." "Untestable" does not mean permitted. You heard the defendant say that himself. In his phone call, any time you give something to a

horse to make it better, that's doping. Whether or not they test for it is another story.

Because you know that there's a difference between following the rules and not getting caught. Seth Fishman's drugs were not intended to follow the rules. That's not how he described them. That's not how he designed them. They were intended to avoid getting caught.

And how do you know that? Well, I'm going to talk about just two examples. One, blood builders, that substance that builds up a horse's red blood count that increases their performance; and two, drugs that were designed by the defendant to be administered the day of a race. These two types of drugs show you absolutely without a doubt that the defendant knew that he was breaking the rules and just doing it in a way that he and his clients wouldn't get caught.

So let's talk about blood builders. Adrienne Hall testified that blood builders are not allowed. If the racing commission found out, you could get in big trouble for using it. Suspended or fined.

Now remember, Adrienne Hall is a relatively young trainer. She only he got her trainer's license in December 2017. She spent far less time in the racehorse industry than the defendant, who has been doing this for about two decades. But even Adrienne Hall knows that you cannot give blood builders to a horse. And if she knows the rules, then

Seth Fishman does, too.

You heard Dr. Cynthia Cole testify about blood builders as well. She told you that Epogen is a class of drug known as a blood builder, and she is aware of no jurisdiction that permits Epogen to be administered to a racing horse at any time.

But blood builders are exactly what the defendant sold, like BB3. Remember that tiny vial with the blue cap. That's what the defendant offered to trainers. And he knew how important blood builders are to athletes in any sport.

(Audio recording played)

MS. MORTAZAVI: So even though blood builders aren't allowed at any time in any jurisdiction, Seth Fishman still sold them to trainers.

But it's not just blood builders, it's also those drugs that were designed to be administered to a horse injected into a horse the day of a race. And you know that that is not allowed in pretty much every state. Adrienne Hall testified to that. She told you her understanding: You are not allowed to administer a drug to your horse the day of a race, VO2 Max, and pretty much every state has that rule. Adrienne Hall knows it. And she's only been doing this for four years.

Now you also know that the defendant understood that you weren't allowed to give drugs the day of a race because of his private phone call with Lisa. He talked about trainers

that did that, trainers who would hit their horse in the gas station right before pulling up to the track, and he said that's a crime.

(Audio recording played)

MS. MORTAZAVI: So the defendant knew: Race day drugs, that's not allowed. And yet the defendant designed drugs that were intended to be used the day of a race. And we went over some of these drugs, drugs like VO2 Max, administer intravenously one to four hours prior to strenuous exercise; HP Bleeder, administer IV or IM six to eight hours before exercise; pain shot, four to six hours prior to strenuous exercise, administer IM or IV.

Now I expect that someone might look at this and say well, these labels say "exercise," they don't say "race." But don't let those labels fool you, don't let the term "exercise" fool you, because that's exactly what the defendant wants. That's exactly why he put "exercise" on these labels. That is misleading. Because on these labels, these labels that might be found by the racing commission, he put "exercise," but in the defendant's private conversations, his texts, his emails, his phone calls, he and his clients talked about using these the day of a race.

Adrienne Hall told Seth Fishman outright she used the VO2 Max race day.

(Audio recording played)

MS. MORTAZAVI: Now she also testified that the defendant never told her to follow the racing rules when she used his drugs. That means that even after the defendant learned under no uncertain terms that she had broken the racing rules, he never told her hey, wait, stop, you should use these according to the rules in your jurisdiction.

Look at these text messages between the defendant and the trainer Jorge Navarro. Navarro asks if he can give his horse pills right up until the race, and the defendant says yes. No qualifiers, no instructions.

And look at the defendant's own description of VO2 Max, a description that he gave to his main sales rep Lisa to pass along to trainers. He said it himself in this email, he wrote this description of VO2 Max: Use four to five fors -- meaning hours -- prior to race. So in private, there was no question the defendant knew that his drugs would be used the morning of a race, and in private the defendant knew "exercise" means "race." And putting down "exercise" on his labels, well, that was just another lie, another lie that the defendant used to avoid getting caught.

And the defendant already told Adrienne Hall on a wiretapped call that he lied on his labels. In one call he told her that he put six days out on the label of a bottle he gave her, meaning six days in advance of a race. And why did he do that? Not because you were supposed to use that drug six

days in advance of a race, but if a bottle gets turned in, then at least when they see "use six days out," they don't think it is a prerace as well. So when jurisdiction finds something and they see "use six days out," then it is almost like they don't pay too much attention to it because it's like a disclaimer that it is not a prerace.

The defendant knew that labels mattered when it came to drugs that were being administered on the day of a race, when it came to avoiding being caught, because someone could pick up a bottle and read the label. And the reason he lied on those labels is because he knew it was wrong, he knew race day drugs violated the rules.

So that's how you know. When the defendant talks about a drug that is not testable, he is not talking about following the rules, he is talking about cheating and getting away with it.

So let's talk about the next way you know that the defendant tried to defraud and mislead people, by siloing customers, that is, by offering to create exclusive products customer by customer, different drugs for different trainers. That way he made sure that if one trainer got busted, it doesn't take down his whole operation, it doesn't take down any other client. And this was a service that he offered to people who could afford to pay it.

So what does that mean for your deliberations? Well,

it means that Seth Fishman made more and more untestable, unapproved, misbranded drugs. He didn't wait to go through FDA CVM's drug approval process for each of the hundreds of drugs that he created. That was part of his crime, creating and selling unapproved drugs quickly, limiting the fallout to the rest of his business if one trainer was caught.

And how do you know that? Well, the defendant said so himself. Look at these text messages from one of the defendant's phones: I make custom bioengineered products. Owners prefer to pay more for exotic stuff knowing they are less likely to get caught. And on this phone call the defendant explained: Most of the products I make are private and custom.

And he even told people why he did that; the exact same reasons we have gone over, because if one trainer gets caught using the defendant's drug and the commission designs a test for it, it's bad, but it won't take down the whole business. It won't affect other trainers. It won't affect other product lines.

Look at this call, this is a call between Seth Fishman and Adrienne Hall: Unless somebody turns you into the race jurisdiction, nobody is going to test for it because it's not known until it is known. That's why I make different ones for different trainers, because some trainers want to have something that's more exclusive. You won't have to worry about

trainer A doing something stupid.

And he even explained it on another call: The reason I say that certain people want exclusivity is because you know if these horses are being tested and they have something that somebody else has and that person is irresponsible, then it becomes a problem for them.

So that's also how you know how the defendant tried to defraud and mislead people, by creating hundreds of drugs, offering to create exclusive custom lines for individual clients who were willing to pay for it, to avoid drug tests, to avoid compromising his business if someone gets caught, so the defendant couldn't be stopped.

And how else do you know that the defendant was trying to defraud or mislead people? Because he was careful with who he worked with. He wanted to make sure that people buying his products could be trusted, that they wouldn't turn him in. He wanted to avoid snitches. "Snitches" is his word, that's not my word. That is how the defendant described people that he thought might threaten his business.

Look at this description of one of the defendant's drugs, Equifactor. This was a list of products that Seth Fishman and Lisa Giannelli compiled together to give to clients: The labs could never detect unless a snitch turned a bottle -- tuned a bottle in -- and the racing authorities decided to make a test.

He spells it out right there, who he's trying to deceive, what he's trying to avoid, the risk of getting caught. The defendant in a wiretapped call says, in his own words: I don't know how many FEI snitches there are like there are racehorse snitches. At any given time you know ten percent of the equine population racing Standardbreds will snitch.

In an email from the defendant to Lisa he describes BB3, that blood builder that we talked about, the one with no label. He describes it as a long-acting blood builder and makes sure that she knows would only let trusted clients have this.

In another email that Seth Fishman sent again to the Lisa describing B3, what's likely a typo for BB3, he writes: I would really stay low key on this one.

Why BB3 more than anything else? Because he knows it's a blood builder and blood builders are banned.

Here's the thing, ladies and gentlemen, use your common sense. If you are doing something legal, if you are selling legal products that comply with all the rules, you don't have to worry about snitches. You could sell to anyone because you have nothing to hide. But the defendant and his co-conspirators hid a lot because they had a lot to lose. Their whole operation could be shut down.

So they vetted clients. Look at these messages from 2017 between Lisa and the defendant. Lisa says they have a new

client, she set up payment information, credit card on file, and the defendant doesn't ask about the patient, the horse, he asks: Can he be trusted? And Lisa says: I will ask around.

Look at these text exchanges between Lisa and the defendant where they discuss whether they can trust clients. This text exchange at the top from 2019, the defendant asks: Can you trust Corey? And Lisa responds: Yes.

Other text messages, later in 2019, Lisa brings to the defendant's attention a particular customer, Brady Gallaghers. She says she spoke to someone who knew him, who could vouch for him. But she still says proceed slowly, he needs to become a regular client and get the everyday supplies before opening the door to bigger stuff. And only then, only once Lisa reassures the defendant about this person does the defendant agree to speak with her.

And on a call between the defendant and Lisa, he says he didn't really want to talk to a customer because he wasn't sure that they were trustworthy.

(Audio recording played)

MS. MORTAZAVI: On a wiretapped call on June 6, 2019, the defendant learned that one of his products was extremely popular. And he told his partner, John Pundyk, who was distributing drugs as part of the conspiracy: You got to kind of feel them out on a scale of one to five, five being awesome solid and one being as soon as something goes wrong, they're

crying.

The defendant was telling Pundyk to do exactly what Lisa did every day, categorize people before you sell to them, check out customers, ask around. Are they going to be awesome solid or are they going to be snitches?

And this same partner, Pundyk, emailed the defendant about a client, doing the exact same thing Lisa did, subject, customer, and in the email: Please call him today. I checked up on him and he is clear.

And don't forget Adrienne Hall. Remember, she reached out to him, but she told you that the defendant didn't get back to her right away when she texted him about prerace options. First, Lisa had to tell the defendant that she had found somebody who could vouch for Adrienne Hall, another trainer that they trusted. She's a referral of Danielle Maier. And only after that did the defendant reach out.

Screening clients, checking to see if they were a snitch, checking to see if they were trustworthy, that is also how you know that the defendant tried to defraud and mislead people.

Next, you know that the defendant tried to defraud and mislead people because of how he labeled or didn't label his drugs. We talked about some of this already. The defendant put down "exercise" when what he really meant was "race." The defendant put six days out on a drug label so it didn't look

like it was going to be used right before a race.

But he did more than that. Now at this trial you heard a lot about the defendant's company, Equestology. But you wouldn't know the name of his company if you were to look at the bottles of his drugs.

Look at all the labels in this case, photographs, files on the defendant's computer and Dropbox account, stickers that were seized from the defendant's office, hundreds of vials of drugs that were taken from the defendant's office from Lisa's home, from racehorse training centers, almost none of them contained the name of the defendant's company Equestology.

Equestology is the name that is listed on invoices sent to trusted clients, Equestology is the name that was given to the bank when they opened up a corporate bank account, but that is not the name that you are going to see on Seth Fishman's bottles; Equi-Tech, Equifactor, Equimass, SPC or Specialized Performance Compounds, or no name whatsoever, drugs that are with just identified by cap color and maybe a very simple line, BB3. Across these labels, no manufacturer's address, no contact information; in other words, no way to trace these drugs back to Seth Fishman.

And the defendant didn't just leave out information that should have been on these labels, he added information on these labels that were lies, like the phrase R and D, meaning research and development. Well, that's a lie. Look at these

labels, this product is for R and D and clinical evaluation, for R and D and clinical trial use only. Seth Fishman was no researcher, and neither were his clients. But they knew that anybody who saw these labels might think that these drugs, even if they didn't look exactly like they were FDA approved, that they might be okay, they might be part of a clinical trial, they might be something other than what they were, illegal drugs.

Look at these series of texts where Equestology employee Mary Fox and Seth Fishman discuss an order for Jamen Davidovich. That's the racehorse trainer who testified at this trial. Mary asks: Which label do you want used for TB-7 for Jamen order? The defendant responds: Use nicer label.

Then Mary Fox, the defendant's employee warns him, wanted to be sure as it has no directions, and says: For R and D, for clinical trial use only. And the defendant says: Well, that's okay.

Did Jamen Davidovich seem like a researcher to you? Did it seem like he was involved in clinical trials? Or did it seem like it was exactly what he told you, that he was a racehorse trainer trying to dope his horses.

But that's not the only false information that the defendant put on his labels. He added language to make it appear that these drugs were prescribed, again so that someone picking them up might think, well, I haven't seen this drug

before, but if a vet gave it out, it must have been prescribed, it must be okay.

But you know that Seth Fishman didn't prescribe each of the drugs that he sold. Lisa sold these drugs for him in bulk. The defendant sold these drugs in bulk. Customers asked for the drugs by name and they got them. No diagnosis, no prescription, no mention of an animal. Look at these labels: IM or IV for as or as prescribed by veterinarian. Federal law prohibits dispensing without a prescription. This device is restricted to use by or on the order of a licensed veterinarian. Lies and lies.

Picture the person who picks up one of Seth Fishman's drugs, whether you're an agent from the FDA or from customs, whether you're from a state drug regulator like the Delaware Division of Professional Responsibility or whether you're an employee of a state racing commission, you find one of these bottles with one of these labels, could you know that it came from Equestology? Could you know who to contact if you had questions about the drug? Could you know what to test for? Could you even know from the bottle what the drug is supposed to do?

No, you could not. And that was the point. The labeling itself was designed precisely to mislead. The information that was put in this, the information that was left out, the way these labels were designed tells you that it's not

just that they were misbranded, they were also deceptive.

And finally, you know the defendant intended to defraud and mislead people because he used his status as a veterinarian as a cover so that no one would question why he was distributing so many drugs.

Now make no mistake, Seth Fishman was a drug manufacturer, but he knew that if he maintained his vet license, well, then the lines might get a little blurry. It would be too difficult to challenge him. And he could say that all these performance-enhancing drugs that he was peddling, well, they were just therapeutics, they were medically necessary, they were prescribed off label.

Now the defendant has no burden of proof in this case. I want to make that perfectly clear. Throughout this trial, from beginning to end, the burden of proof rests with the government. The defense is under no obligation to present any evidence. They're not even under any obligation to make an argument. But if the defense does choose to make arguments, then you have the right to scrutinize them. You have the right to question it. You have the right to ask if those arguments are consistent with the evidence that you have seen, with the calls, the text messages, the emails, the testimony.

And you heard over the course of this trial questions about whether the defendant cared about the health and wellbeing of horses. Those questions are a total distraction.

The defendant's vet status is part of his cover story. He maintained his vet license for a day just like this when he would have to answer for his crimes. His vet license was yet another way that the defendant tried to defraud and mislead people, to make it seem like he was practicing veterinary medicine when what he was doing was running an illegal drug manufacturing business.

Remember the search of Equestology back in 2019, the piles of drugs that were seized from his unit that we brought into the courtroom last Friday, some of the drugs that are right here in front of you today. That is not a vet's office, that is a drug warehouse.

Remember when Courtney Adams testified at the very beginning of this trial, in the entire time she worked at Equestology, for about four years, Seth Fishman only touched a horse once or twice, maybe.

And remember what the defendant said in a recording that he made that was saved to his iPad. At that point, he hadn't touched a horse in four years.

(Audio recording played)

MS. MORTAZAVI: And remember when Adrienne Hall asked Lisa if the defendant would conduct a lameness exam, a physical exam of one of her horses, and Lisa said Seth Fishman doesn't examine horses.

And just look at how he interacts with his customers.

Look at these messages with Tom Guido on Seth Fishman's phone. No mention of an animal or a prescription or a diagnosis. This is a drug distributor taking orders, this is not a veterinary prescribing medication.

And you also know that Seth Fishman is using his vet license as a cover story because he already did it once before. Remember that complaint that we went over with the Delaware Division of Professional Responsibility. The defendant was accused of not practicing veterinary medicine. He was accused outright of just being in this drug distribution business for profit. And Seth Fishman lied. He said Lisa doesn't sell drugs, and he said I am a vet who physically examines all the animals I treat.

So those lies, that cover story, the fact that the defendant happens to be licensed as a veterinarian, well, that's all part of his scheme. That's already built into the conspiracy. That shows you that he wanted people to be misled.

So those are all the reasons, ladies and gentlemen, that you know what was in the defendant's mind when he participated in this conspiracy.

And you also know that he's been doing this for an extremely long time. On a wiretapped call in 2019, Lisa told Seth Fishman they have been doing this for about 15 or 18 years. And you heard testimony from Ross Cohen, the racehorse trainer, that he has known that Lisa sells drugs for Seth

Fishman going back as early as 2001.

Now when you go back to begin your deliberations, you're going to be asked whether Seth Fishman is guilty or not guilty of Count Two. But you're also going to be asked an additional question, you are going to be asked whether he continued his crimes while he was on bail, after he was arrested on October 28, 2019. You heard that he was arrested and then placed on bail as of that date and that he has continued to be on bail up until this trial. You also heard that a condition of his bail is that he not commit any crimes. But you also know that the defendant kept his illegal business going even while he was out on bail.

Look at these text messages between the defendant and Lisa, and look at the dates. Only a few weeks after Seth Fishman is arrested in connection with this race, after he's placed on bail, he still keeps his business going, he tells Lisa: Send Mary a list of what is needed and priorities.

And a few months later Lisa asks how much he wants to charge per tube of his bleeder paste, and he responds: 45. Seth Fishman, even on bail, is still calling the shots.

Look at these text messages, not including Fishman, but between Mary Fox and Lisa Giannelli, two of his co-conspirators. They talk about fulfilling orders, getting product out, using old labels.

And look at the message on the top: I will email him

again and get back with you. January 17, 2020. They're also talking about checking in with the defendant, making sure he knows, because he is still keeping the business alive.

You also know that from the emails between the defendant, Mary Fox and Jordan Fishman, the supplier to the defendant. You know from the emails between all of them that the defendant kept committing crimes. In this January 29, 2020 email, Jordan Fishman writes to say VO2 Max is formulated and is being vialed.

February 10, 2020, the defendant writes Mary Fox to ask questions about their inventory, and he is asking about the exact same drugs that they distributed before Seth Fishman was ever arrested, VO2 Max, EGH. You remember EGH, that's the equine growth hormone. You heard about it at this trial. PSDS, that's the defendant's pain shot. You heard about that, too.

In more emails, January and February 2020, months after the defendant was arrested, Mary Fox writes Seth Fishman and talks about the amount of drugs they are producing with reference to pallets: Pallet 2 from 21 shipping today with VO2 and PSDS, EGH to be completed and shipped ground next week.

January 20, 2020, Mary Fox sending Seth Fishman a list of orders. Here's a list of everything needed, EGH a thousand, meaning a thousand bottles, VO2 Max, 500, PSDS, 600.

You also saw the deposit slips from Equestology, and

these are all dated from just a few weeks after the defendant was arrested up through the end of 2019, all while Seth Fishman was out on bail.

And you heard about the search that occurred of Equestology's business. It happened just a few months ago in December 2021, right before this trial, FBI agents went to Seth Fishman's office and warehouse space again. They found drug packaging there, again, and they found drugs there, again, the exact same drugs that Seth Fishman had been distributing before his arrest.

And look at the date of manufacture on this drug, the DOM as it's listed, January 2021, over one year after the defendant was first put on bail. And agents also found instructions in his office for making drugs. Because Seth Fishman never stopped; even after his arrest in this case, he kept committing crimes.

So ladies and gentlemen, all of that was Count Two. I'm going to talk to you very briefly on Count One.

Count One is the conspiracy involving Jorge Navarro. Navarro was one of the most successful Thoroughbred trainers in the country, The Juice Man, someone who got drugs to dope horses from multiple people, not just the defendant, someone the defendant sold to for years.

Now when you deliberate, you're going to be asked whether Seth Fishman joined in a conspiracy centered around

Navarro's own doping operation with the goal of moving performance-enhancing drugs around the country so Navarro could dope his horses. And the proof on this is simple. The drugs Navarro bought from the defendant, BB3, bleeder pills, VO2 Max, drugs that were not FDA approved, not manufactured in a registered facility, not labeled properly; in other words, adulterated and misbranded, drugs that moved across state lines. Remember, they were made up in Massachusetts by Jordan Fishman, they were shipped down to Florida where Equestology is located, and they were shipped to Navarro, at his addresses, one in New Jersey, and one in Florida. That's all in Exhibit 401K, which are the text messages between Navarro and the defendant.

And you know what Navarro ordered from the defendant because of his order history with Seth Fishman: BB3, bleeder pills, VO2 Max, HP Bleeder Plus.

And you know that Navarro ordered these from the defendant because of their text messages. Between Navarro and Seth Fishman: Do you have any bleeding pills? If you do, send me a thousand. Need them by this weekend.

A call when Navarro discusses VO2 Max, what he describes as the amino acid, something so powerful that when he gave it to his horses, the horse galloped. VO2 Max, which we talked about, that's the drug that has to be administered the day of the race. That's the drug Adrienne Hall administered to

her horse the day of a race.

BB3, the infamous blue cap blood builder, a drug that Navarro told Fishman he loved.

And you also know from the proof in this case that when Navarro won a big race on March 30, 2019, he gave the defendant credit. The defendant wrote: Congratulations, just saw your race. And Navarro wrote back: Thank you, Boss, you were a big part of it.

And finally, you know that Count One, the Navarro doping conspiracy, touched this district, the Southern District where we're sitting, because Seth Fishman, while he was in Manhattan, placed a phone call to one of his employees to fulfill an order for Jorge Navarro. This is an intercepted call between Seth Fishman and his employee, Mary Fox, making sure that they had set things up for an order with Jorge Navarro. In other words, he took an act to promote the conspiracy while located in this district.

So ladies and gentlemen, you've heard a lot of evidence in this case. You've heard me talking about both counts that you're going to consider. But really, the facts here are simple: The defendant for years thought he could cheat the system. He thought he could cheat FDA. He thought he could cheat customs. He thought he could cheat state drug regulators. He thought he could cheat racing commissions, and he and his clients thought they could cheat at horseraces.

Seth Fishman cheated the system for a very long time, and he made millions of dollars doing it. But the defendant can't lie and cheat the system forever. And today we're asking you, ladies and gentlemen, to use your common sense and reach the only verdict that is consistent with the law and the evidence, that the defendant, Seth Fishman, is guilty on all counts.

Thank you, your Honor.

THE COURT: All right. Thank you, Ms. Mortazavi.

Ladies and gentlemen, at this time we're going to hear from -- well, we're going to take first the morning break, and then we'll hear from Dr. Fishman's counsel, Mr. Sercarz.

I remind you, please, do not talk about the case or about the government's argument. Keep an open mind until you hear from everyone and you retire to deliberate.

Have a good break, and I will see you back here in about 15 minutes. Thank you.

(Jury not present)

THE COURT: All right. I will see everyone back here at 11:30.

MR. FERNICH: Judge, there's nothing that comes up on this screen.

THE COURT: I will see if we can look at that during the break. Thank you.

(Recess taken)

(In open court; jury not present)

THE COURT: All right. You can be seated, everyone. The jury is on its way up.

(Pause)

(Jury present)

THE COURT: Please be seated, everyone.

Mr. Sercarz, are you ready to proceed on behalf of Dr. Fishman?

MR. SERCARZ: Yes, your Honor.

THE COURT: All right. Please.

MR. SERCARZ: May we have a check to see if all the screens are working?

THE COURT: I believe we checked over the break.

MR. SERCARZ: Okay. Thank you, your Honor.

THE COURT: You just needed to turn it on, I believe.

MR. SERCARZ: May it please the Court, the government, Mr. Fernich, ladies and gentlemen of the jury.

Let's put it this way. It was a dark night, and I came upon a gentleman standing under the light of a street lamp, and there was a look on his face that indicated that he was quite agitated about something. And so in an effort to be helpful, I approached him and I said: Sir, is there anything I can do for you? And he told me: I've lost the thing that was most important to me in life. And I asked him to describe it, and he did.

And it was clear that the pain and the anxiety just wouldn't go away, and so again, in an effort to be helpful, I asked him: Well, where was it when last you had it? And he pointed away from the streetlight, across the road, down to a dark and obscure place, and he said: That's where I had it when last I remember holding onto it. So I asked: Him why are you looking over here? And he looked at me with a look of self-confidence, not unlike the looks that we've seen displayed in this courtroom during the trial, and he said: The light is better over here.

The government plays a portion of a tape that has the words "cheat the system" in there because they want you to hear the words coming out of my client's mouth; never mind the context in which it is spoken; never mind that the person on the receiving end of the comments, if I have the right message, is one Adrienne Hall. A lot more about her later. We need the words "cheat the system." Stay here. The light's better over here.

I don't begrudge the government the opportunity to prove their case by whatever means are most appropriate, but I will remind you, ladies and gentlemen of the jury, that on my opening statement, I told you that Seth Fishman did not comport his behavior to all of the -- my words -- mind-numbing regulations of the Food, Drug and Cosmetic Act as administered by the FDA.

I told you that upfront and, yet, ladies and gentlemen of the jury, you were guests at the parade, day after day, witness after witness, exhibit after exhibit, even left here piled up, ladies and gentlemen of the jury. If I were a couple of inches smaller, you wouldn't be able to see me. Stay here, they say. The light's better over here.

The government says that if you don't warn customers in advance that your product may violate Food, Drug and Cosmetic Act regulations, that's proof of an intent to mislead. On the other hand, if you put things on your label, directions on your label, that's proof of an intent to mislead. Come to your conclusion of guilt, assume guilt, and it all falls into place. Stay here, they say. We have the vials, we have the labels. Stay here, they say. The light's better over here.

They tell you I'm about to offer evidence of Seth Fishman's good faith, his good behavior, and they label it "a distraction." You'll hear the Judge offer an instruction on good faith. More about that later. But when you presume guilt, demonstrating that there's another side to the defendant, demonstrating it based on their own evidence, is a distraction. Stay here, they say. The light is so much better over here. Here, in the bright light of hindsight; here, in the bright light of the courtroom, stay here, they say. The light's better over here.

My client, I tell you again, did not comport with the

process that was described by Dr. Bowman, that Food, Drug and Cosmetic Act regime involving research, testing, registration of manufacturing facilities, proof of what they called CGMP, good manufacturing practice, labeling requirements, including labeling the ingredients, the usage instructions, over-the-counter labeling clear to the layperson, prescription labeling that has to go to a more detailed level because of the warnings that need to be administered on the product.

All of it in the well-intentioned -- in the well-intentioned -- to the well-intentioned purpose, part of the well-intentioned design to ensure the safety and efficacy of drugs. But in the process, in the process, ladies and gentlemen of the jury, what is the cost? What is the expense?

You know, Dr. Bowman used a very interesting turn of phrase during the course of her examination. I asked her about the process, and among the things she said is that we have a sit down; we have a sit down with the companies. We go over the protocols, explaining to them how to meet our requirements as to all of these portions of the regime in order to secure safety and efficacy, companies. And then she kept referring to her clientele, the consumers that come before her, as "firms," over and over again, ladies and gentlemen of the jury.

Big pharma, come on in. We want to sit with you and talk to you. Moderna, Pfizer, please, there's room at the table for you, but for the independent, independent

veterinarian, who wishes to go into the business of pharmaceuticals, well, that may be slightly cost prohibitive.

And the government, the government, their evidence, the government points you to a tape about an effort from my client to manufacture pentosan, and sell it for use in India, and you're told two to $3 million and the entire process, if that's what you're going to do.

So, yes, ladies and gentlemen of the jury, my client determined to sell his pharmaceutical products outside of FDA channels, and I'll go a step further with you. His interest was in performance, athletic performance, and that ought to be clear to you as well.

Nonetheless, ladies and gentlemen of the jury, the Court is going to give you an instruction on the subject of good faith. We contend in this case that having made the decision, the improvident decision, okay? -- the improvident decision to market his products outside of FDA channels, he attempted to do so properly, properly in accordance with his oath as a veterinarian, to provide for the health and welfare of animals, ladies and gentlemen of the jury. And the government labels that a distraction. You'll hear the instructions by the Court. But stay here, they say. The light's better over here; here, where the labels are; here, where the bins are.

Did the government exercise quality control in the

introduction of their evidence? Jamen Davidovich, one of the informants that accuses my clients of selling drugs, whose texts and whose conversations are prominently displayed in this courtroom, began training racehorses seriously in 2014. From the very inception he was giving them performance enhancing drugs, growth hormones, clenbuterol, blood builders.

He admits to purchasing either the raw materials or the drugs themselves from the likes of Weatherford Compounding, Dan Frascella, a website called HorsePrerace.com, and Epogen from a buddy of his before he ever met Dr. Fishman. He claims he met Dr. Fishman in 2016 and again in 2017, through an owner that he knew.

And at that second meeting, Dr. Fishman -- you remember, Dr. Fishman, my client, the guy with that obsession for secrecy, siloing his customers -- Dr. Fishman described, according to Mr. Davidovich, his full menu of drugs, and he gave that dramatic demonstration with the napkin, showing how he defeated testing.

He even sent Davidovich, according to Davidovich, a package of drugs after that first meeting. And Davidovich claims that on two subsequent occasions he orders and receives drugs from my client, and then inexplicably, inexplicably, both orders contain painkillers and, yet, he tells you: I don't use painkillers on my horses; so I threw them out, or I gave them away. And then there's another order that comes and that, too,

contains painkillers. I don't use painkillers; I throw them away.

Their evidence. Their witnesses, who are supposed to tell the truth, according to the terms of their cooperation agreement. And on cross-examination, I pressed him to determine whether he wasn't selling product and using my client's name to tout the drugs and make money in the process.

And he admitted that, at least on one occasion, he had to line up a customer from some omeprazole that he ordered, but his customer ended up purchasing GastroGard from somewhere else. Yes, I was reselling drugs, in other words.

And with regard to those painkillers, the ones he ordered but never used? He suggested he never sold them for profit. So why did he get them in the first place? See, that's a bad thing when a defense lawyer begins asking questions. When you start pulling at the threads, at the fabric of the government's proof in a case like this.

Ladies and gentlemen of the jury, as to these informants, you don't have to leave your common sense at the door. No mention of Davidovich on the government's summation, no mention of the decision to call those witnesses. Much better to just point to the labels and then go straight to guilt. Stay here, they beseech you. Stay here. The light's so much better over here.

And then we come to a character by the name of Ross

Cohen. Ross Cohen not only purchased drugs for use on his horses, but he sold drugs as well. He began working as a trainer at Yonkers Raceway in 1994. Now, in New York, you couldn't administer any medications on race day, but he did it so often and had so many false positives that by 1997, he received a letter of removal from Monticello Raceway, and then Yonkers Raceway followed suit, and they removed him as well.

By 2001, he was reinstated and receiving performance enhancing drugs from a gentleman named Tom Guido. Again, suspended from Yonkers Raceway for six months. He admits to administering a variety of drugs obtained from a veterinarian named Dr. Skelton.

And in addition to IV drugs, you're introduced by this colorful character to the concept of drenching a racehorse with performance enhancing drugs, putting a tube down their throat in order to administer the drugs to them in their stomach.

His horses have tested positive in tests involving Percocet and Vicodin. He not only purchased drugs for use on his own horses, he admits to reselling drugs. He not only engaged in the use of performance enhancing drugs, but he fixed races by paying jockeys to pull up their horses and then betting on the opposition.

The government quizzed their witnesses about their cooperation agreements, their proffer, limited immunity agreements, their non-prosecution agreements, and they put the

language forward to you as an example of securing the truth, ensuring the truth from their witnesses.

They came to you and, in effect, said: What incentive do they have to lie? What incentive do they have to lie? After this litany of misconduct, this colorful character, Ross Cohen, pleads guilty to one count, one count of adulteration and misbranding conspiracy capped at five years. Let me repeat that. One count of adulteration and misbranding conspiracy in exchange for this litany of misconduct.

But they don't want me tugging too hard at the strings of whether or not their witnesses were credible, whether or not they exercised any quality control. Don't worry about the informants, we got the labels here. We got the bins here. We got the tapes here. Stay here. The light is so much better over here.

And when I asked him about the terms of his cooperation agreement, he stated it's the government who decides whether I deserve my 5K1.1 letter; it's the government who decides whether this cooperation has been complete, substantial and truthful.

The government tells you he has no incentive to lie, but you might want to recall that after Mr. Cohen was suspended from Yonkers Raceway, he was permitted to return, pursuant to an oral agreement that he not commit any crimes, that he not violate racing regulations. And I asked him how long did it

take, how long did it take after you were permitted to return, after you agreed orally to abide by the rules of the racetrack, how long did it take for you to begin breaking those rules again? His words "it was almost instantaneous."

Mr. Sercarz, don't waste their time. Don't distract them. Don't tug too hard at the fabric of their well-placed and well-put-together prosecution. Stay here, ladies and gentlemen of the jury. The light's better over here.

I want to provide you with a framework for resolving this case. The Court will instruct you that we have no obligation to produce witnesses, no obligation to introduce evidence, that there's no requirement for a defendant to testify. The burden is on the government. It never shifts.

The burden is to prove each and every element of the crimes charged beyond a reasonable doubt, and so it's been my endeavor to use their evidence, their witnesses and their tapes to try and take a deeper dive into the character of Seth Fishman; to demonstrate to you, ladies and gentlemen of the jury, using their own evidence that the evidence put forth by the government does not meet the crimes charged in the indictment.

You will hear an instruction from the Court, and I want to read it to you, charge No. 5, and I quote: "The defendant is not charged with committing any crime other than the offenses in the indictment." My client is not charged in

this courtroom with horse doping, ladies and gentlemen of the jury. He is charged with a conspiracy to engage in conduct involving the adulteration and misbranding of his products, not horse doping.

Dr. Bowman testified that she considers any product intended for animals a drug if intended to treat a disease or effect a structure or function of the animal. She described the multiple hurdles that must be overcome in order to get a product approved, and I won't repeat them for you yet again.

She also told you that even if the drug is approved, any change in ingredients, any change in manufacturing location, any modification of the intended use requires a supplemental approval, and if a drug is not approved, it is deemed unsafe unless it passes something called G-R-A-S-E analysis, generally regarded as safe and effective, generally within the larger scientific community.

This well-intentioned set of regulations can result in their share of what I would call illogic, and I tried to use for the good doctor as an example the product glucosamine and chondroitin. It was kind of like pulling teeth, with all due respect. Is it considered a drug in humans? I'm not an expert on what is considered a drug for humans, says the good doctor. Is it used in animals? Yes, it's used to treat arthritis in horses. Has a GRASE analysis ever been conducted? Honestly, I have no idea, says the good doctor, because I never did one

myself.

In other words, for a 150-pound human, Glucosamine and chondroitin may be perfectly okay to treat joint pain, but for a thousand-pound racehorse, no GRASE analysis ever performed. If somebody like Seth Fishman wanted to develop a Glucosamine and chondroitin product, it would be deemed a dangerous drug and, therefore, unsafe, ladies and gentlemen of the jury.

When I asked her about the cost of bringing a new animal drug to market, well, I don't have the data at my finger tips. But Government's Exhibit 3404 is that e-mail stream -- the government actually played a portion of it on their final argument -- between Dr. Fishman and a gentleman named Karthik Ragawan, a discussion of bringing a drug named pentosan to market in India, and you heard something about the cost. You also heard in the process something about my client's reputation for creating new product.

The Court will instruct you, ladies and gentlemen of the jury, on the concept of good faith. If the defendant had a good-faith belief that he was acting properly, even if wrong, ladies and gentlemen of the jury, even if it turned out to be harmful, you must consider that. And the burden of proof on the issue of intent is on the government to disprove the defendant's good faith. We have no burden of proof here. They're the ones with the burden of proof, and it doesn't shift.

I want to talk to you a little bit about Dr. Fishman and what you've learned about him in this evidence in the context of that good-faith instruction. In my opening statement, I described what I called the crazy quilt of overlapping federal, state and local regulations that can affect the practice of veterinary medicine.

Dr. Bowman told you something that I want you to bear in mind when you consider the charges in this case, not the horse doping case that may be tried in some other courtroom in some other jurisdiction but in this case. It is not the province of the FDCA or the FDA to regulate the practice of veterinary medicine.

The FDCA is not a racing authority. She also acknowledged to you that there are exemptions for compounding drugs and off-label usage when veterinarians are the ones that are dispensing or administering the drugs, and the concept of the veterinary relationship with the animal and caregiver, what they called VCPR, that's the subject of state regulations, and it was never fully defined for you in this courtroom. The parameters were never fully exposed for you in this courtroom, ladies and gentlemen of the jury.

So I ask you to consider whether or not, from what you've learned about Seth Fishman, he was a veterinarian who devoted himself to performance -- and by the way, performance not only in animals, but in humans -- not only in horses, but

in camels.

You heard some of this from the evidence as well, he attempted properly, in the context of a dirty business, a rough neighborhood -- the neighborhood where Jamen Davidovich and Ross Cohen and Tom Pellegrino and the others live, the others you've heard about -- to wean his customers off of the toxic drugs and to give them more benign substances, all in the effort to promote the health and well-being of animals or, in short, what the government calls the distraction.

The government suggested in examining witnesses that IV drugs ought not to be administered by a trainer because of the risks involved. I will make the observation to you that according even to Ross Cohen, the trainer is the boss, in quotes, when it comes to the horses in the stable. They are quite familiar with injecting their horses. Jamen Davidovich learned how to inject a racehorse at the knee of his father. He did it often.

Dr. Cole told you that racing regulators set standards for the use of substances within a certain time frame of a race. The parameters vary from state to state. The nature of the substances ban vary from state to state. The full parameters of racing regulations were not explored in this courtroom, ladies and gentlemen of the jury.

On cross-examination of Dr. Cole, I had her describe the veterinarian's oath and, in particular, the prevention of

animal's suffering, and she acknowledged that it can make for some hard choices. We used, as an historical example, the drug clenbuterol. Clenbuterol a bronchodilator, which she described as often a beneficent drug used for appropriate purposes to clear the lungs of a horse, and yet, it was discovered later on that that drug also had anabolic properties and, therefore, it was banned at various racetracks in various locales across the country.

The government has done a masterful job of compiling its greatest hits album of Dr. Fishman's greed, his arrogance, his locker room bravado, but if you look carefully at their own evidence, it emerges that he's a complicated individual, like all of the rest of us, with aspirations, I respectfully submit, to do good and to do well in the care of horses, even allowing for his flaws.

Remember the testimony by Courtney Adams, who was hired to work as Dr. Fishman's administrative assistant, who began by running errands and picking up his dry cleaning and was later called upon to organize his life and then his business? If anyone was intimately acquainted with my client and the way he conducted his business, it would be Courtney Adams, ladies and gentlemen of the jury.

She told you she would never work for someone she knew to be violating the law. She worked closely with Dr. Fishman for more than five years. She began by maintaining her office

in the very apartment where he lived in a spare bedroom, and from there, organized everything to do with Equestology.

She tracked his e-mails. She kept track of his inventory. She even went into the labeling part of the practice for Dr. Fishman. She met his customers, including Geoffrey Vernon, the veterinarian, the captain of the U.S. Olympic team, the equestrian team. She even traveled with him overseas to Dubai.

During her tenure with Equestology, she moved to Idaho for a year and never thought about leaving his employ. When she moved back east, she continued to work with Dr. Fishman, and he was anxious to have her get involved in the sales of his product. She didn't leave his employ until 2017, and even then, she left only when, to use her words, she was "over it," and he had accused her of using his credit card for her personal benefit and taking his personal property.

Only when that false allegation emerged and arguments emerged between the two of them and, yet, she testified on that witness stand, under oath, the government's witness, that she never knew him to be engaged in any sort of an unlawful enterprise. Dr. Fishman was conscientious. He used capable sources to manufacture his products, again, not in conformity with FDA requirements. I tell you again, ladies and gentlemen of the jury. Nemera Pharmacy, 21st Century Biochemical.

Dr. Fishman contributed money to 21st Century

Biochemical, bought them equipment to help them manufacture to his specifications. When his pain shot was unstable, he refused to sell it. It's in the evidence. Courtney Adams testified when he received occasional complaints about the color of the product, when it was cloudy, he was worried about it. He checked back with the lab to figure out what the product was, what was wrong with it. He kept after it until the company stopped and the complaints dissipated. That's Dr. Fishman, too, ladies and gentlemen of the jury.

And while Fishman did not include the ingredients of his proprietary formulas, he was careful to include on the labels instructions for use. Exhibit 401-Y, you don't have to look at it now, ladies and gentlemen of the jury, an e-mail or a text involving the drug butamine. And he warned people to administer it very slowly because of its potential toxic effects. He warned customers, even other veterinarians, regarding the side effects of his products and the possibility of false positive tests. Look at 401-LL when you're in the jury room, ladies and gentlemen of the jury.

But among his flaws was his arrogance, including -- and this is Courtney Adams speaking -- his arrogance regarding his knowledge of veterinary medicine and the products that he was selling. The Court will instruct you on good faith, ladies and gentlemen of the jury. A good faith belief that you are acting properly, even if wrong, even if potentially harmful, is

a complete defense to the allegations relating to intent in this case.

Yes, ladies and gentlemen of the jury, they have their labels. Yes, ladies and gentlemen of the jury, they have their bins. But this is a side of my client as well. I ask you, please, to consider this evidence no matter how they implore you, no matter how they cajole you, no matter how they beseech you, stay here, stay here; the light's better over here.

Adrienne Hall, she first sought to contact Dr. Fishman to give one of her horses a lameness exam, but she learned he no longer went to the track to examine animals because he had back problems. Subsequently, she came to see him regarding performance enhancing drugs. We're not running away from it. I'm not hiding from it. I'm not distracting you from it.

She was getting them from a guy named Poliseno, Tony Poliseno, and she didn't like what his drugs were doing to her animals. She wanted something less toxic. She had heard about Dr. Fishman from another trainer, and what was it that she heard? If you'll forgive me, another distraction. That he was reputable, that he was reasonable.

Before you see only the ugliness in horseracing, ladies and gentlemen of the jury, before you seek to classify every one of my client's customers as a Guido or a Poliseno or a Ross Cohen, take a look at the world through the eyes of Adrienne Hall. You met her on the witness stand.

This lovely woman, who graduated with a degree, I believe it was, in media communications, found when she was working a job, that she couldn't stay away from the lure of the track, the beauty in the sport, the real beauty in the sport. Life is more complicated than it is portrayed in hindsight, in the bright lights of this courtroom, ladies and gentlemen.

Dr. Fishman offered her a program, in quotes, to build up the blood of her horses, not a quick shot a few hours before race time, ladies and gentlemen of the jury. May I ask that Exhibit 103-A, the tape recording 103-A, be played for the ladies and gentlemen of the jury, please?

(Audio recording played)

I respectfully submit to you that Dr. Fishman was talking to a kindred spirit, someone who cared for the health and safety of her own hourses. May I ask the government to play 105-B, please.

(Audio recording played)

Thank you. Dr. Fishman counseled treating the animals with care, ladies and gentlemen of the jury. May I ask that you play the beginning of 105-C for the jury, please.

(Audio recording played)

Looky there, ladies and gentlemen of the jury, "cheat the system." They've got my client saying "cheat the system," quoted by Ms. Mortazavi at the beginning of her summation. Never mind that we take things out of context in order to

improve upon them. Never mind that we want to paint the innocent consistent picture. Never mind that we view the world through the clear light of hindsight, ladies and gentlemen of the jury. Don't be bothered by the distractions of the defense, going into those dark places. Stay here, they say. As the light is so much better over here.

Ladies and gentlemen, in order for the government to establish the aggravating element of intent to defraud or mislead, the requisite intent must be connected -- you will hear this in the charge -- related in time, causation or logic to the dissemination of adulterated or misbranded drugs, not an intent to mislead with regard to horse doping, ladies and gentlemen of the jury.

Intent to mislead with a nexus, a causal nexus to the crimes charged in this indictment, the intent charged in this indictment, the intent to adulterate and misbrand the products, ladies and gentlemen of the jury. I respectfully submit that if what I'm about to say departs from the law, reject it.

You will hear the instruction from the Judge, but I submit it needs, at the very least, that there must be a cognizable victim and that there must be a nexus between the intent and the adulteration and misbranding that's charged in this indictment. That's why on my opening statement, I began to talk about who, and asked you to make the government indicate who the cognizable victim is of this alleged intent to

deceive and mislead.

Now, the government spent a lot of time on that how, how, untestable, siloing drugs, avoid snitches, deceptive labels, used his license as a shill. That's the how in the intent to mislead according to the government. But intent to defraud or mislead as to what? Please ask that question in the jury room, ladies and gentlemen of the jury.

First of all, what about the customers? The customers who purchased Dr. Fishman's products were sophisticated consumers. He consulted with and sold to other veterinarians, Dr. Vernon, Dr. Adel, Dr. Zanaty in Saudi Arabia. His customers included purchasers in the United States, the United Arab Emirates, Saudi Arabia, Dubai, Singapore. The owners and trainers who purchased from Dr. Fishman were knowledgeable about their horses and the products that they were buying.

In the words of Adrienne Hall, they sought Dr. Fishman because he was reputable and reasonable. He made no material misrepresentations to his customers. His product lists did not go beyond what could be called mere puffery. He did not intend to defraud or mislead them.

I respectfully submit, ladies and gentlemen of the jury, that the government failed to prove beyond a reasonable doubt that Dr. Fishman intended to defraud the FDA. On cross-examination, I made a point of asking Dr. Bowman whether she and Dr. Fishman ever had that sit down that she described.

There was no sit down. There were no representations made to the FDA regarding the existence of studies or clinical trials, the content of Dr. Fishman's products, the method of manufacture.

Regarding the labeling, there was no effort to mislead as to the contents. I asked Dr. Bowman, and she said these labels, they didn't even come close to adhering to FDA requirements. There was nothing on these labels that indicated that they were FDA approved drugs.

You know, at one point, the doctor told you something about what would constitute defrauding and misleading the FDA and what the statute was really designed to avoid. This statute, the one we're dealing with in this courtroom. She gave you two examples, magic water that it is claimed will cure cancer when the representation regarding the intended use is clearly and patently false, and eye drops that actually contain some caustic substance that is going to damage the eye.

That's the heartland, the heartland purpose of this statute. That's the kind of misleading and fraudulent deceptive content that they are seeking to avoid in order to protect their consumers. It is not the province of the FDA to regulate horseracing, ladies and gentlemen of the jury.

I respectfully submit that Dr. Fishman's in the same position as someone who, at his worst, decided not to pay taxes, never filed a return, and never sent a check to the IRS.

Did he do something that violates a regulatory regime? Yes, he did. But an intent to defraud and mislead the Internal Revenue Service, an act of tax fraud? I don't think so, ladies and gentlemen.

Is there proof beyond a reasonable doubt of an intent to defraud or mislead racing regulators regarding the fact that his products did not go through FDA channels? I respectfully submit that there is no such proof.

During my cross-examination of Jamen Davidovich, I showed him Dr. Fishman's order list. Dr. Fishman paid -- withdrawn. Dr. Fishman charged by the order. His customers paid by the order. They did not pay Dr. Fishman more if their horse won, placed or showed in a horserace.

To demonstrate the lack of a causal connection, I offer you the following hypothetical, ladies and gentlemen. A veterinarian provides a trainer with an FDA-approved product, say an FDA-approved blood builder. They agree to secretly administer it to the horse close to race time, and they do it deliberately for the purpose of improving that horse's performance in a race.

The use of the drug violates racing regulations. Does it matter whether the drug is FDA approved or not? Most respectfully, for purposes of the racing regulators, it does not. Conversely, the trainer uses one of the veterinarian's non-FDA-approved drugs, but he uses it in a way that causes the

drugs to clear the system of the racehorse days before the race. So there is no violation of the pertinent racing regulations. Do you find that veterinarian guilty anyway? Look, he did a bad thing, any statute will do? Or do you follow the law and look for the causal nexus that is required by the statutes?

(Continued on next page)

MR. SERCARZ: If Dr. Fishman set about to deceive regulators, he did so by making his products untestable, not by adulterating and misbranding his products, ladies and gentlemen of the jury.

And the same applies to contacts with customs regulators and the possibility that border items are being violated, the export of the drugs across the border, price lists are being violated for customs purposes, they're being downgraded. You got to find a nexus, a nexus between any effort to defraud or mislead and the specific elements of the statute in this case, ladies and gentlemen of the jury, and I respectfully submit to you that everything else is a distraction.

At the end of the day, Seth Fishman chose, improvidently chose to live in a rough neighborhood among racehorse owners and trainers who were desperate for a chemically-induced competitive advantage. I submit he made a good faith effort to wean them off of the more toxic drugs they were using, to provide them with a safer alternative, and thereby to adhere to his oath as a veterinarian to provide for the health and wellbeing of the animals. And if he violated a regulatory regime in the process, ladies and gentlemen of the jury, they still have to prove his malevolent intent beyond a reasonable doubt, and I respectfully submit that at the end of the day, the government has failed to meet their burden of

proof.

And with regard to the crime, the aggravating factor that the crime must be committed with an intent to defraud or mislead, I respectfully submit, ladies and gentlemen of the jury, that regardless of the "how," as demonstrated in the government's opening summation, they did not demonstrate that kind of an intent with the appropriate causal connection to the statute that we're considering, they did not prove an intent to defraud or mislead as to adulteration and misbranding as set forth in the indictment.

Ladies and gentlemen of the jury, when I sit down, no one else can rise to speak for Dr. Fishman. In the interest of focusing your attention on what I submit to you was important in this case, I did not deal with every item of evidence or every argument raised by the government.

The government has an opportunity to get up and respond to what I have said. I have no more opportunities to speak on Dr. Fishman's behalf. So I say to you, if you feel there's something I should have discussed, ask yourselves: What would Dr. Fishman's lawyer say? If there's an argument that I haven't dealt with, ask yourselves: What would Dr. Fishman's lawyer say?

The government was nothing if not thorough in the time, energy and resources they devoted to their proof. But there's something that they couldn't account for, ladies and

gentlemen of the jury, they couldn't account for you, people who were willing to step away from what is convenient, what appears on the screen, and look in the dark corners to see what was really going on in my client's mind, to really probe the four corners of his intent, and then audit this proof and see whether the government has met their burden in this case.

Ladies and gentlemen of the jury, my time is at an end. Your time will soon be at hand. Have the wisdom to follow the law. Look in every dark corner until you find the truth in this case and then have the courage to be fair to Seth Fishman.

Thank you.

THE COURT: Thank you, Mr. Sercarz.

Ladies and gentlemen, we're going to take our lunch break now. I remind you, again, please do not talk about the case until after you hear the rebuttal argument from the government and I charge you on the law and you retire back to the jury room to begin your deliberations.

Please have a good lunch and I will see everyone back here at 2 o'clock.

(Jury not present)

THE COURT: Everyone have a good lunch and I will see everyone slightly before 2 o'clock so we're ready to go at 2:00.

(Luncheon recess taken)

AFTERNOON SESSION

(2:05 p.m.)

THE COURT: The jurors are on their way.

(Jury present)

THE COURT: All right. As we told you before the lunch break, the final lawyer we'll hear from is Mr. Adams, who will give a final closing statement on behalf of the government.

Mr. Adams, please.

MR. ADAMS: Thank you, your Honor.

I will be brief with these remarks this afternoon.

Misquotes of the transcript, blatant misstatements of the law, winding discussions of things that are totally irrelevant to this case, that's what you got from Seth Fishman this afternoon. Yes, those were distractions.

Fishman's charged here with agreeing with other people to do various things with misbranded drugs; principally, as you're going to hear, to distribute them, to receive them, to put them into commerce, to deliver them. And since the defense spent much of its time speaking to you conceding that the drugs are misbranded, as he must in the face of the evidence, the question is just what Ms. Mortazavi put to you this morning: Did he do these things? Did he distribute? Did he deliver? Did he put these drugs into commerce with the intent to defraud and mislead? Was the purpose of the distribution, the purpose

of putting the drugs into commerce, to defraud and mislead?

There's zero requirement that the victim of this fraud be the customer. You will not hear that today. Of course not. The customers are Dr. Fishman's co-conspirators in this case. There is zero requirement that the lie being told, that the object of the fraud be a lie about the fact that the drugs are misbranded, that is not a requirement. That is a made-up piece of law that Mr. Fishman is floating as a distraction. "Distraction" is the kind way to put it, and the Court is going to set everybody straight on that in just a moment, as I expect.

Look, over the course of 20 years, Seth Fishman set up a core story. It's a false story. It's a string of lies. It's designed to get him out of trouble in a situation exactly like the one that he is in today. Lies about the notion that he wasn't a drug dealer, that he was a veterinarian acting in good faith, that he wasn't doping horses for money, that he was caring for the safety and health of his patients, that his drugs weren't for races, they were for horse workouts or something. All of those are lies. You know all of that because you have been paying attention to the evidence over the last many days.

And I don't envy Mr. Sercarz's task here today. He fought hard for his client. But he does not have much to work with, and he's not a magician. He cannot make the evidence

disappear. He can't make the emails or the text messages or the wiretap recording or the small mountain of drugs or the iPad recordings or the bank records or the shipping records or the photographs of his client's drugs found at barns across the country disappear. So with no real defense to offer, with nothing to say about the actual evidence in the case, misstating the law and misquoting the transcript and ignoring the evidence is what they have to offer.

So I'm not going to respond to everything that Mr. Sercarz said. Ms. Mortazavi anticipated and largely disseminated everything that he had to say before I ever had to stand up here. But I do want to touch on a couple of points that were made, and this is all with the goal of redirecting this process towards what actually matters, towards the evidence and towards the law.

So let me start with this notion of good faith, Dr. Fishman just wanted to help the horses, that he wanted to act as a legitimate veterinarian. That's not true. Dr. Fishman wanted horses to run faster. He wanted them to run more often. He wanted them to run through things like chronic pain. He wanted to manipulate their blood. He wanted to manipulate their vasculature, their adrenal glands, their hormones. He wanted to do that so his clients could make money while slipping under the regulatory regimes. He was a drug dealer, he's not a doctor.

And you didn't hear at all in the defense summation any notion that his clients were his patients. That just didn't come up. Of course that didn't come up. They weren't his patients. He had no relationship with his animals. Whatever the boundaries of a valid client-patient relationship might be, Dr. Fishman had none. If you have a dog at home, Dr. Fishman has the same veterinary relationship to your dog he has had to Ross Cohen's horses or Jamen Davidovich's horses or Adrienne Hall's horses.

So what does it say about his good faith if you actually look at the evidence in this case?

Ms. Jung, if we could pull up 118AT.

This is a call captured on a wiretap, not mentioned by Mr. Sercarz at all. This is a discussion here about, as you see in the second line, a new trach shot, an injectable drug that goes into the trachea, into the horse's neck. Have they figured it out yet or not? If you look at page 2, Fishman is experimenting with this drug. He's looking for guinea pigs. That's under the street lamp. That's in the light. Mr. Sercarz doesn't want you to look at that. Prefer for you to stay in the dark.

Let's look at 102ET, please, line 6.

This is a call with Adrienne Hall. It's not a call that Mr. Sercarz talked about at all. So Monday, Mary will have stuff, and then if you want to try stuff on your horses,

you can try it. He's referring here to blood-building drugs. And just so everybody remembers, blood-building drugs are never allowed in racing horses; doesn't matter if it's the race day or not. You heard that from Dr. Cole and other witnesses. Blood building drugs are banned.

He's talking with a complete amateur about injectable blood-building drugs on this call, Epogen, Epogen hematics. He's specifically discussing the kind of drugs that will get Hall kicked out of racing -- permanently potentially -- if she got caught. The doctor had a reputation. You don't get caught with Dr. Fishman. This, beyond a misquote of the law, is a misquote of the transcript. Adrienne Hall doesn't talk about Dr. Fishman having a good reputation as a vet. That's not what she said. Ask for the transcript. You can do it when you go in the back. If you want to look at the transcript for any of the witnesses, you can ask. Adrienne Hall knew Dr. Fishman to have a reputation as somebody to help you win.

What's his advice to Adrienne Hall? What's his advice to this complete amateur? Try some stuff on your horses.

Does that sound like a caring veterinarian relationship to you? No.

In Exhibit 105, 105C, which is the transcript that Mr. Sercarz decided to put up on the screen, one of the few, he pointed to this call like it shows that Seth Fishman cares for Adrienne Hall's horses. That's not what this shows. He never

saw Adrienne Hall's horse. He never saw Ross Cohen's horses. He never saw anybody's horses. He's not a veterinarian, he's a drug dealer.

He pointed at this call as if this shows his good faith, glossing over the fact that Dr. Fishman mentions that his other clients burn through their horses in a couple of months when they use his drugs. Adrienne Hall, who doesn't have much money and doesn't have many horses, as you heard, can't afford to burn through her horse in a couple of months. So he develops a longer-term program to build the horse's drugs through illegal blood builders. Again, it might take a couple of weeks; doesn't mean that it's a race day injection, but it also doesn't mean that it was legal. It was in fact illegal, but something that could slip underneath the radar. That's the purpose of Dr. Fishman's business.

If we could look at 139AT, please.

This is a conversation with Lisa Giannelli. It's his primary sales representative. Nothing stops these guys from hitting their horses in a gas station. And her response has to do with the risk of intramuscular drugs being administered by amateurs sometimes at gas stations. And her reaction is that you're risking an infection. Of course you're risking an infection. Your common sense will tell you that. That's just nasty.

Fishman's response: It's more than just an infection.

It's also painful. It's painful when you go and stick something into someone's neck and ask them to run for money.

Does this sound like a valid veterinary relationship to anybody? No. No. He doesn't care about these horses' health. He cares that they run faster.

This is a call that happened on June 4, 2019. Did he stop selling intramuscular drugs on June 5, 2019? No.

Did he stop selling intravenous drugs on June 5, 2019? No.

You know, because you looked at the evidence, that he kept doing exactly that all the way up until December of last year, after he was arrested, after he was put on bail, still manufacturing drugs in 2021. Just nasty.

Take a look at Government Exhibit 113AT and go to page 5, if you don't mind, Ms. Jung.

This is a conversation with Jeff Gillis. It's the end of a conversation. You might recall that it's specifically about slipping misbranded drugs across the U.S./Canadian border. And it's another one of these choose your own adventure calls, like a valid veterinarian would do, pick whatever drug you want, we'll make it work. He's perfectly happy to send Jeff Gillis an Epogen or the BB3. Whatever you want to inject in your horses, Dr. Fishman is happy to sell it.

If you actually look at the evidence in the case, as the government is inviting you to do, you will learn that he

was actually more inclined, that he was happier to sell drugs without caring about the animals into which those drugs were being pumped. In fact, not practicing veterinary medicine is a point of pride for this guy.

Let's look at Government Exhibit 106E, page 2, please.

It's a lot less work and it's a lot more lucrative to be the shot guy, to be the guy who just sells shots.

Let's look at 912T, please. We can go to the last page.

I'm telling you I'm like the only guy in this gig that doesn't have to touch horses. You can put that on my résumé.

Walk into your vet's office, please, ask for the résumé. If it says Harvard Veterinary School post-graduate work at Oxford and I don't touch animals, find another veterinarian.

You sat through an hour of argument from the defendant. Not once did he play you any of these calls. Not once did he point you towards any of them. This isn't a case where he wants you to be looking for the evidence, where he wants you to go search in the dark corners of Seth Fishman's mind. The point of the Seth Fishman's presentation today, which he didn't have to give, Ms. Mortazavi reminded you, is to distract you.

Not once did he mention that every witness in this case, Courtney Adams, Ross Cohen, Adrienne Hall, Jamen

Davidovich, everyone that had this experience with him told you that he didn't examine horses and that he was no one's vet.

Why? Why not mention that? Because he knows that if you think about the evidence, if you look at the evidence, if you recall what the witnesses told you, Seth Fishman is guilty on both counts, and that it won't take long for you to make that determination.

Let me touch on the notion of the nexus and the purpose of these misbranding offenses. Again it was suggested to you that you need to find that the customers are the victims. Not true. You will hear that in just a moment.

It was suggested to you that you need to find that the fact that the drug is misbranded is the relevant thing that the lie has to be about. Not true. Wait for it. The judge is going to instruct you on the law.

He just argued to you that all the drugs were misbranded, they're adulterated, unsafe, unregistered, unlabeled, and he didn't engage in these conspiracies with any intent to defraud or mislead. Ms. Mortazavi walked through six different ways that you know that that's false. She anticipated and obliterated that argument before Mr. Sercarz even started talking. That's presumably why the decision was made to misstate the law rather than engage with the evidence.

MR. SERCARZ: Objection.

THE COURT: Overruled.

MR. ADAMS: So I won't spent much time on that. But the core fact, again, is that every time that Dr. Fishman shipped one of his drugs it was part of a conspiracy to distribute and misbrand adulterated drugs, distribute them, to put them into commerce. And why did he do that? To provide others with the tools that they needed to deceive racing commissions, to make money on races where the horses weren't allowed to be, with doped-up horses using illegal drugs, and to do so without being caught, to do so without being stopped by state regulators or by the FDA. It was distribution of misbranded drugs with the intent to defraud and mislead.

Courtney Adams testified about this directly on point. She testified that the entire purpose of the company was to create untestable performance-enhancing drugs. You can call for the transcript for Ms. Adams, who were among the people that Fishman told you that he was concerned would be asked -- would ask questions about his business.

Page 113 of the transcript.

Why did he want Adams in this case to be cornered, to be gagged under non-disclosure agreement? Why did he want that?

There are quite a few people, she said, that the FDA, any regulatory person basically, basically any authority that has to do with horses. That went unmentioned in closing statement from Dr. Fishman.

Government Exhibit 910T. This is the I'm-a-bad-guy recording about the non-disclosure agreement. He's talking again specifically about gagging his employees in the event that regulatory authorities like the FDA come calling. Again, he's agreed with other people, including people on the call that he recorded, to distribute illegal drugs and to do so with the intent to defraud and mislead.

This, the notion here, continues in a different conversation that was also recorded on Fishman's iPad at 912T. This is the conversation about setting up the Panamanian corporation again for the purpose of misleading the FDA specifically. I set it up, set up his sham corporation, as a shield against FDA. Why? So that if the FDA started asking questions about why he's sending drugs around the world, they would think oh, we don't have jurisdiction here, he's a foreign corporation. He's not, he's sitting in a condo in Florida selling drugs, but he wants the FDA to be misled.

The nexus that Fishman talks about and that you will hear more about in the judge's instructions is actually even tighter than all that because the labeling itself is also misleading. And Mr. Sercarz didn't even try to touch this. Research and development, clinical trials, drugs to be administered by a vet, all false. All false. The notion that Jamen Davidovich is running research and development or clinical trials is absurd, which is why it wasn't mentioned in

the closing statement of Dr. Fishman.

The purpose of the labeling here is to slip by regulators. That's why it's on there. People who are buying it, they know full well it's not for research and development. It's his co-conspirators. It's so if anyone walks into the barn and finds the bottle, they won't bring charges.

Think about those labels from the perspective of somebody who was actually acting in good faith. Put yourself in the mind of someone who was actually trying to build a program to make drugs that would help the horse, that was not designed to mislead, that was designed to aid the horse in overcoming pain or fixing its red blood cell count, addressing anemia, whatever it might be, good faith, an actual veterinarian, think about that. How would you label the drug if you were that person?

You might say this drug contains the following ingredients. Dr. Fishman doesn't do that. You might say these ingredients are testable. They can be used only for the medical purpose by which they're prescribed. Don't use them in a horse that might be racing. You might say that if you actually had that concern. Not testable is almost the exact opposite of what you would say if you were a person acting in good faith. Dr. Fishman is not a person acting in good faith. Not testable is what he says.

Quick note on the cooperators, this was a bit all over

the place. The defense sort of wants to have it both ways with the cooperators and the witnesses in the case. On the one hand, when, for example, Ross Cohen is talking about his bad acts, that's totally truthful, he's telling the full truth. Of course, Ross Cohen's bad acts are Dr. Fishman's bad acts. They're co-conspirators.

But then at the same time that you're told you should believe these guys when they talk about their bad acts, you're also told don't believe them, they're lying about something. Never actually said what it was they're lying about in the course of that summation, did they? Except for one time, one time it was suggested to you that Jamen Davidovich lied to you about using or reselling these pain shots that he received, that he had received blood builders, he used those. Davidovich told you he received some pain shots, that he didn't use those. Mr. Sercarz asked you whether that sounded plausible to you.

What they didn't mention is that Davidovich brought the pain shots into court. These are the pain shots. This is Government Exhibit 14024. They're right here. This is in the light. Don't look at this. An inconvenient fact for Dr. Fishman.

They want you to believe that Courtney Adams would risk her non-pros agreement lying to you about something that they didn't define, that Ross Cohen would risk his cooperation agreement, that he would be stuck with his guilty plea and no

support at sentencing just to lie about Seth Fishman, that Adrienne Hall would lie and risk her non-prosecution agreement. Adrienne Hall, who, by the way, is entirely corroborated by Courtney Adams and Ross Cohen. Ross Cohen who, by the way, is entirely corroborated by Courtney Adams and Adrienne Hall, et cetera, et cetera.

Does that make any sense to you? Does it make any sense that these people who do not know each other would come in and tell you the same essential facts, that they would come in here and tell you in their own stories and then have those stories happen to match up with entirely independent evidence? Do you think -- does Dr. Fishman expect you to think that those witnesses somehow hacked into Seth Fishman's email account, or that they forged a bunch of text messages, or that Ross Cohen impersonated Seth Fishman during the course of the wiretap over Seth Fishman's phone? Is that what they want you to think? Do you they want you to think they invented this evidence years, years before the charges were brought? If it sounds absurd it's because it is absurd.

And moreover, the defense knows it's absurd. They stipulated that in fact the emails are true, they're authentic, that the text messages are authentic, that the wiretap and the people listed on the wiretap are authentic and correctly labeled.

But if you look at that evidence, they know that Seth

Fishman is guilty, and so they ignored it and continued to ignore it throughout the time they were talking to you.

Mr. Sercarz talked about the standard proof that's at issue in this case. It's beyond a reasonable doubt. That's the standard that's the burden, that's the burden that he carry. It is a weighty standard. It's the standard that has applied in every criminal case in this courthouse. It's the standard that applies in every criminal case since the beginning of this country. And the government has met that standard in this case. It's a standard that reflects the seriousness of this event.

And this is a serious case. It is a serious case just like every criminal trial in this court. It's a serious case because we are talking about serious crimes. It is a serious case but it is not a close case. The evidence is overwhelming. This defendant's criminal intent is obvious. Your job is serious, but the road ahead is clear. Seth Fishman is guilty as charged. Thank you.

THE COURT: All right. Thank you, Mr. Adams.

All right. Members of the jury, you have now heard all of the evidence in this case as well as the arguments of the parties. We have reached the point where you're about to undertake your final function as jurors. You have all paid very careful attention to the evidence, and I'm confident that you will act together with fairness and impartiality to reach a

just verdict in this case.

At this point, the next and final stage before you retire to deliberate is for me to instruct you on the law. The instructions are not short, so I suggest that we just take a very brief break at this time, not retire to the jury room, but just maybe stand and stretch in your places. It will also give Ms. Dempsey an opportunity to make an announcement to anybody else in the courtroom.

So we'll just take a couple of minutes and then we'll all regroup.

DEPUTY CLERK: Ladies and gentlemen, the Court is about to charge the jury. Any spectator wishing to leave the courtroom may do so now or remain seated until the completion of the Court's charge.

THE COURT: My duty at this time point is, as I said, to instruct you as to the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them, just as it has been my duty to preside over the trial and decide what testimony and evidence is proper under the law for your consideration.

On these legal matters, you must take the law as I give it to you. If any attorney or witness has stated a legal principle different from any that I state to you in these instructions, it is my instructions that you must follow.

You should not single out any instruction as alone

stating the law, but you should consider my instructions as a whole when you retire to deliberate in the jury room.

You should not, any of you, be concerned about the wisdom of any rule that I state. Regardless of any opinion that you may have as to what the law may be or ought to be, it would violate your sworn duty to base a verdict upon any other view of the law than that which I give you.

Because my instructions cover many points, I have given each of you, or my colleagues have given each of you a copy of them so that you may follow along, if you wish. In addition, you may take your copy of the instructions with you for reference during your deliberations. You should not single out any instruction as alone stating the law; instead, you should consider my instructions as a whole when you retire to deliberate in the jury room.

Your final role is to pass upon and decide the fact issues that are in the case. You, the members of the jury, are the sole and exclusive judges of the facts. You evaluate the evidence. You determine the credibility of the witnesses. You resolve any conflicts there may be in the testimony. You draw whatever reasonable inferences you decide to draw from the facts as you have determined them. And you determine the weight of the evidence.

I'll discuss with you later how to pass upon the credibility or the believability of witnesses.

In determining the facts, you must rely upon your own recollection of the evidence. What the lawyers have said in their opening statements, in their closing arguments, in their objections or in their questions is not evidence. In this connection, you should bear in mind that a question put to a witness is never evidence. It's the answer only that is evidence. But you may not consider any answer that I directed you to disregard or that I directed struck from the record. Do not consider any such answers. Nor is there anything I may have said during the trial or may say during these instructions with respect to a fact matter to be taken in substitution for your own independent recollection. What I say is not evidence.

The evidence before you consists of the answers given by the witnesses, the testimony they gave, as you recall it, and the exhibits that were received in evidence. You may also consider as evidence the stipulations of the parties and the exhibits received pursuant to those stipulations, including audio recordings, photographs and physical evidence.

Since you are the sole and exclusive judges of facts, I do not mean to indicate any opinion as to the facts or what your verdict should be. The rulings I have made during the trial are not any indication of my views of what your decision should be as to whether or not the guilt of the defendant has been proven beyond a reasonable doubt.

You should draw no inference or conclusion for or

against any party by reason of lawyers making objections or my rulings on such objections. Counsel have not only the right, but also the duty to make legal objections when they think that such objections are appropriate.

Further, do not concern yourselves with what was said at sidebar conferences or my discussions with counsel. As we told you throughout the trial, those discussions relate to rulings of law.

I also ask you to draw no inference from the fact that upon occasion I interacted with certain witnesses. Anything I said was only intended for clarification or to expedite matters, and certainly was not intended to suggest any opinions on my part as to the verdict you should render or whether any of the witnesses may have been more credible than any other witnesses. If I commented on the testimony or any other evidence at any time, do not accept my statements in place of your recollection or your interpretation. You are expressly to understand that the Court -- meaning me -- has no opinion as to the verdict you should render in this case.

As to the facts, ladies and gentlemen, you are the exclusive judges. You are to perform the duty of finding the facts without bias or prejudice as to any party. You to perform the duty of finding the facts without bias or prejudice, as I say, to any party. You are to perform your final duty in an attitude of complete fairness and

impartiality.

The case is important to the government, for the enforcement of criminal laws is a matter of prime concern to the community. Equally, it is important to the defendant, who is charged with serious crimes.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded to any other party to a litigation. By the same token, it is entitled to no less consideration. All parties, whether government or individuals, stand as equals at the bar of justice.

The defendant has pleaded not guilty to the charges in the indictment. To convict the defendant, the burden is on the prosecution to prove the defendant's guilt of each element of the charge beyond a reasonable doubt. This burden never shifts to the defendant for the simple reason that the law presumes a defendant to be innocent and never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

In other words, the defendant arrives and starts with a clean slate and is presumed innocent of each charge until such time, if ever, that you, as a jury, are satisfied that the government has proven that the defendant is guilty of a given charge beyond a reasonable doubt.

Since, in order to convict the defendant of a given

charge, the government is required to prove that charge beyond a reasonable doubt, the question then is: What is reasonable doubt? The words almost define themselves. It is a doubt that is based on reason. It is a doubt that a reasonable person has after carefully weighing all the evidence. It is a doubt that would cause a reasonable person to hesitate to act in a matter of importance in his or her personal life. Proof beyond a reasonable doubt must, therefore, be proof of a convincing character that a reasonable person would not hesitate to rely upon in making an important decision.

A reasonable doubt is not caprice or whim. It is not speculation or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. The law does not require that the government prove guilt beyond all possible doubt. Proof beyond a reasonable doubt is sufficient to convict.

If, after fair and impartial consideration of the evidence, you have a reasonable doubt as to the defendant's guilt with respect to a particular charge, you must find that defendant not guilty of that charge. On the other hand, if, after fair and impartial consideration of all the evidence, you're satisfied beyond a reasonable doubt of the defendant's guilt with respect to a particular charge, you should find the defendant guilty of that charge.

The defendant, Seth Fishman, is formally charged by a grand jury in an indictment. As I instructed you at the outset

of this case, the indictment is a charge or an accusation. It is not evidence. The defendant is not charged with committing any crime other than the offenses in the indictment.

The indictment in this case contains multiple charges, known as counts. Each count charges a separate offense or crime. Although there are facts in common to different counts, each count must be considered separately. Each count must therefore be considered separately by you, and you must return a separate verdict on each count.

Count One of the indictment charges that from at least in or about 2016 through at least in or about March 2020, Seth Fishman, the defendant, conspired with others -- that is, agreed with others -- to violate the federal criminal law prohibiting what is known as drug adulteration or misbranding with the intent to defraud or mislead. Specifically, the defendant is charged with agreeing with others to introduce misbranded or adulterated drugs into interstate commerce, to misbrand or adulterate drugs in interstate commerce, to receive in interstate commerce misbranded or adulterated drugs, or to take any act with respect to a drug while held for sale after shipment in interstate commerce, with the intent to defraud or mislead.

Count Two of the indictment charges that from at least in or about 2002 through at least in or about March of 2020, Seth Fishman, the defendant, conspired with others -- that is,

agreed with others -- to violate the federal criminal law prohibiting what is known as drug adulteration or misbranding with the intent it to defraud or mislead. Specifically, the defendant is charged with agreeing with others to introduce misbranded or adulterated drugs into interstate commerce, to misbrand or adulterate drugs in interstate commerce, or to receive in interstate commerce misbranded or adulterated drugs, with the intent to defraud or mislead. Count Two also alleges that the defendant continued to commit that offense after he was arrested and released on bail in this case.

In a moment, I will instruct you on the law that you must apply when considering each of Count One and Two. Much of the law that applies to Count One will also apply to Count Two, and I will note where the law is applicable to each count. In the few instances where there is a difference between the laws applicable to each count, I will note that for you and provide specific instructions for those particular elements or findings.

As I just indicated, for purposes of your determination, the indictment contains two counts charging the defendant. Each of these counts constitutes a separate offense or crime, and you must consider each count of the indictment separately and return a separate verdict on each count in which the defendant is charged. Whether you find the defendant guilty or not guilty as to one offense should not affect your

verdict as to any other offense charged.

As I stated, Seth Fishman, the defendant, is accused in Count One of having been a member of a conspiracy to violate the federal laws prohibiting what is known as drug misbranding or drug adulteration between at least in or about 2016 through at least in or about March 2020.

Count One reads in part as follows:

From at least in or about 2016 through at least in or about March of 2020, in the Southern District of New York and elsewhere, Seth Fishman, the defendant, together with others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, to wit, violations of Title 21, United States Code, Section 331 and 333(a)(2).

It was a part and an object of the conspiracy that Seth Fishman, the defendant, together with others known and unknown, with the intent to defraud and mislead, would and did introduce and deliver for introduction, and would and did cause the introduction and delivery for introduction, into interstate commerce, adulterated and misbranded drugs, as defined by 21, United States Code, Sections 351(a)(5), 352(a), 352(b), 352(f), 352(o), 353(f), and 360b, in violation of 21, United States Code, Sections 331(a) and 333(a)(2).

It was further a part and an object of the conspiracy

that Seth Fishman, the defendant, together with others known and unknown, with the intent to defraud and mislead, in interstate commerce, willfully and knowingly would and did adulterate and misbrand drugs, and would and did cause the adulteration and misbranding of drugs in interstate commerce, as defined by 21, United States Code, Sections 351(a)(5), 352(a), 352(b), 352(f), 352(o), 353(f), and 360b, in violation of 21, United States Code, Sections 331(b) and 333(a)(2).

It was further a part and an object of the conspiracy that Seth Fishman, the defendant, together with others known and unknown, with the intent to defraud and mislead, would and did receive in interstate commerce adulterated and misbranded drugs, as defined by 21, United States Code, Sections 351(a)(5), 352(a), 352(b), 352(f), 352(o), 353(f), and 360b, and deliver and proffer delivery thereof for pay and otherwise, and would and did cause the receipt in interstate commerce of adulterated and misbranded drugs as defined by 21, United States Code, Sections 351(a)(5), 352(a), 352(b), 352(f), 352(o), 353(f), and 360b, and cause the delivery and proffered delivery thereof for pay and otherwise, in violation of 21, United States Code, Section 331(c) and 333(a)(2).

It was further a part and an object of the conspiracy that Seth Fishman, the defendant, together with others known and unknown, with the intent to defraud and mislead, would and did alter, mutilate, destroy, obliterate or remove the whole or

any part of the labeling of, and did any other act with respect to a food, drug, device, tobacco product or cosmetic, while such article was held for sale (whether or not the first sale) after shipment in interstate commerce that results in such an article being adulterated or misbranded as defined by 21, United States Code, Section 351(a)(5), 352(a), 352(b), 352(f), 352(o), 353(f), and 360b, in violation of 21, United States Code, Section 331(k) and 333(a)(2).

The defendant is also charged in Count Two with conspiracy to violate the drug misbranding and drug adulteration laws with intent to defraud or mislead. As to Count Two, the defendant is charged with agreeing with others from at least in or about 2002 through at least in or about March 2020 to introduce misbranded or adulterated drugs into interstate commerce, to misbrand or adulterate drugs in interstate commerce, or to receive in interstate commerce misbranded or adulterated drugs, all with the intent to defraud or mislead.

Count Two reads in part relevant part as follows:

From at least in or about 2002, through at least in or about March of 2020, in the Southern District of New York and elsewhere, Seth Fishman, the defendant, together with others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, to wit,

violations of Title 21, United States Code, Sections 331 and 333(a)(2), including while Fishman was released under conditions of bail pursuant to Title 18, United States Code, Chapter 207.

It was a part and an object of the conspiracy that Seth Fishman, the defendant, together with others known and unknown, with the intent to defraud and mislead, would and did introduce and deliver for introduction and would and did cause the introduction and delivery for introduction, into interstate commerce, adulterated and misbranded drugs as defined by 21, United States Code, Sections 351(a)(5), 352(a), 352(b), 352(f), 352(o), 353(f), and 360b, in violation of 21, United States Code, Sections 331(a) and 333(a)(2).

(Continued on next page)

THE COURT: It was further a part and an object of the conspiracy that Seth Fishman, the defendant, together with others known and unknown, with the intent to defraud and mislead in interstate commerce, would and did adulterate and misbrand drugs, and would and did cause the adulteration and misbranding of drugs in interstate commerce as defined by 21, United States Code, Sections 351(a)(5), 352(a), 352(b), 352(f), 352(o), 353(f) and 360b in violation of 21, United States Code, Sections 331(b) and 333(a)(2).

It was further a part and an object of the conspiracy that Seth Fishman, the defendant, together with others known and unknown, with the intent to defraud and mislead, would and did receive in interstate commerce adulterated and misbranded drugs, as defined by 21, United States Code, Sections 351(a)(5), 352(a), 352(b), 352(f), 352(o), 353(f) and 360b, and deliver and proffer delivery thereof for pay and otherwise, and would and did cause the receipt in interstate commerce of adulterated and misbranded drugs, as defined by 21, United States Code, Sections 351(a)(5), 352(a), 352(b), 352(f), 352(o), 353(f) and 360b, and caused the delivery and proffered delivery thereof for pay and otherwise, in violation of 21, United States Code, Sections 331(c), and 333(a)(2).

A conspiracy, as charged in both Counts One and Two, is a kind of criminal partnership -- a combination or agreement of two or more persons to join together to accomplish an

unlawful purpose. The crime of conspiracy to violate a federal law is an independent offense. It is separate and distinct from the actual violation of any federal law which the law refers to as a "substantive crime." The crime of conspiracy is complete once the unlawful agreement is made, the defendant enters into it and an overt act occurs.

If a conspiracy exists, even if it should fail in its purpose, it is still punishable as a crime. Indeed, you may find the defendant guilty of conspiracy to commit an offense even though the substantive crime or crimes which were the object of the conspiracy were not actually committed, were not successful, or were impossible to achieve.

Congress has deemed it appropriate to make conspiracy, standing alone, a separate crime, even if the conspiracy is not successful or could not have been successful. This is because collective criminal activity is believed to pose a greater threat to the public's safety and welfare than individual conduct, and increases the likelihood of success of a particular criminal venture.

To sustain its burden of proof with respect to each of the charged conspiracies, the government must establish beyond a reasonable doubt the following three elements:

First, the existence of a conspiracy charged in each count, that is, an agreement or an understanding to violate one or more laws of the United States;

Second, that the defendant knowingly and willfully became a member of the conspiracy you are considering;

And, third, that any one of the conspirators, not necessarily the defendant, but any one of the parties involved in each conspiracy, knowingly committed at least one overt act in furtherance of the conspiracy that you are considering during the life of that conspiracy.

Now, let's separately consider the elements that constitute the object of each of the conspiracies.

Starting with the first element, a conspiracy is a combination or agreement or understanding of two or more people to accomplish by concerted or collective action a criminal or unlawful purpose. The gist or the essence of the crime of conspiracy is the unlawful combination or agreement to violate the law. As I mentioned earlier, the ultimate success of the conspiracy, or the actual commission of the criminal act which is the object of the conspiracy, is not relevant to the question of whether the conspiracy existed.

The conspiracies alleged here in Counts One and Two, therefore, are agreements to engage in certain kinds of acts that the law refers to as "misbranding" or "adulteration," whether or not those acts actually occurred. The conspiracy alleged in Count One and that alleged in Count Two, therefore, is the agreement to commit each of those charged crimes.

Each charged conspiracy is an entirely separate and

distinct offense from the underlying offenses, which as I told you, the law calls "substantive crimes." The crime of conspiracy is complete once the unlawful agreement is made and the defendant enters into it.

To prove a conspiracy, the government is not required to show that individuals sat around a table and entered into a solemn pact orally or in writing, or any express or formal agreement stating that they have formed a conspiracy to violate the law.

You need not need find that the alleged conspirators stated, in words or writing, what the scheme was, its object or purpose, or every precise detail of the scheme, or the means by which this object or purpose was to be accomplished. Indeed, it would be extraordinary if there were such a formal document or specific oral agreement.

Your common sense tells you that when people, in fact, undertake to enter into a criminal conspiracy, a great deal is left to unexpressed understanding. From its very nature, a conspiracy is almost invariably secret in its origin and execution. Conspirators do not usually reduce their agreements to writing or acknowledge them in front of a notary public, nor do they normally publicly broadcast their plan. Thus, you may infer the existence of a conspiracy from the circumstances of the case and the conduct of the parties involved.

To show that a conspiracy existed, then, it is

sufficient that the evidence shows that two or more persons, in some way or manner, through any contrivance, explicitly or implicitly, came to an understanding to violate the law and to establish an unlawful plan. Express language or specific words are not required to indicate offense or attachment to a conspiracy.

You may find the existence of an agreement to commit an unlawful act has been established by direct proof, but it is rare that a conspiracy can be proven by direct evidence of an explicit agreement.

In determining whether there has been an unlawful agreement, you may consider the acts and the conduct of the alleged co-conspirators that were done to carry out the apparent criminal purpose. The adage "actions speak louder than words" is applicable here.

Often, the only evidence available with respect to the existence of the conspiracy is that of disconnected acts on the part of the alleged individual co-conspirators. When taken together and considered as a whole, however, those acts are capable of showing a conspiracy or agreement as conclusively as would more direct proof.

Of course, proof concerning the accomplishment of the object of the conspiracy may be the most persuasive evidence of the existence of the conspiracy itself, but it is not necessary that the conspiracy actually succeed in its purpose in order

for you to conclude that the conspiracy existed.

In deciding whether each conspiracy alleged, in fact, existed, you may consider all of the evidence of the acts, conduct and declarations of the alleged conspirators and a reasonable inferences to be drawn from such evidence.

It is sufficient to establish the existence of each conspiracy if, after considering all of the relevant evidence, you find beyond a reasonable doubt that the minds of at least two alleged conspirators in each conspiracy met in an understanding way and that they agreed, as I have explained, to work together in furtherance of the unlawful scheme alleged in the indictment.

In short, as far as the first element of each conspiracy is concerned, the government must prove beyond a reasonable doubt that at least two alleged conspirators came to a mutual understanding, either spoken or unspoken, to violate the law in the manner charged in the indictment.

The object or objects of a conspiracy is the alleged goal or goals that the co-conspirators agree or hope to achieve. The indictment here charges that the conspiracy alleged in Count One had four such objects -- objects one through four as I will read them in a moment -- whereas, the conspiracy charged in Count Two had three objects, objects one through three only.

The objects are: Object One, applicable to Counts One

and Two: The introduction of misbranded and adulterated drugs into interstate commerce;

Object Two, applicable to Counts One and Two: The misbranding or adulteration of drugs while they were held for sale after they traveled in interstate commerce;

Object Three, applicable to Counts One and Two: The receipt of misbranded or adulterated drugs shipped in interstate commerce;

And Object Four, which is applicable to Count One only: Taking any action to adulterate or misbrand the drugs.

As for both Counts One and Two, and for each object alleged in each count, the indictment further alleges that the objects were undertaken with the intent to defraud or mislead. I will define the elements of these criminal objects in a moment.

Although the indictment alleges as to Count One that the conspiracy had at least four objects or goals, the government does not need to prove that the conspiracy had all four elements in order for you to find the conspiracy existed. That is, if you find that the government has proven the existence of the charged conspiracy, you do not need to find that there was a conspiracy to do all four of these things.

Similarly, the government does not need to prove that the conspiracy alleged in Count Two had all three charged objects in order for you to find that the conspiracy existed.

To find that the government has proven the existence of the conspiracy charged in Count Two, you do not need to find that there was a conspiracy to do all three of the charged objects.

As to each of Count One and Count Two, it is sufficient if you find that the conspiracy had just one of the charged goals relevant to each count. However, you must be unanimous that one or more of those goals existed. In other words, you may find that the conspiracy charged in Count One existed as to all four objects of the conspiracy, but you need only find one such objective and you may find that the conspiracy charged in Count Two existed as to all three objectives of that conspiracy, but you need only find one such objective.

For each count, however, you must be unanimous as to the object of the conspiracy or unanimous as to multiple objects of the conspiracy, and you must be unanimous that any conspiracy you may find is the conspiracy charged in the count you are considering.

If you conclude that the government has proven beyond a reasonable doubt that the conspiracy in each charge you are considering existed, then you must next determine the second question, whether the defendant participated in that conspiracy with knowledge of its unlawful purpose and in furtherance of its unlawful objectives.

As I mentioned, the conspiracy charged in Count One is

alleged to have had four unlawful objects or goals. Objects One, Two and Three are also the objects alleged with respect to Count Two. I will now describe the law with respect to all four objects.

Remember, you need not find that a conspiracy successfully achieved all of the objectives alleged with respect to that conspiracy. You do need to find, as I said earlier, whether or not the evidence establishes the existence of each of the conspiracies charged in Counts One and Two of the indictment, that is an agreement between at least two people to seek to achieve at least one objective of each respective conspiracy. So that you may consider whether such conspiracies existed, I will describe the law covering the crimes that are alleged to have been the object of the conspiracy.

Object One, which, as I said, is alleged with regard to both Count One and Count Two. The first object of each of the conspiracies charged in Counts One and Two is the introduction of misbranded drugs into interstate commerce, with the intent to defraud or mislead. That offense has three elements:

One. The defendant introduced or delivered for introduction into interstate commerce or caused to be introduced or delivered into interstate commerce a product;

Two. At the time the defendant introduced or

delivered for introduction or caused the introduction or delivery of that product into interstate commerce, the product was a drug;

Three. At the time the defendant introduced or delivered for introduction or caused the introduction or delivery of that product into interstate commerce, the drug was misbranded or adulterated in at least one way;

And Four. The defendant had the intent to defraud or mislead.

"Interstate commerce" means commerce between any state and anyplace outside that state. To deliver something for introduction into interstate commerce means to deliver it to a place for service, such as the United States Postal Service, so that the thing may then be put into interstate commerce with the knowledge that that is what will occur. It is not necessary for the government to prove that the defendant himself carried the drugs interstate or to prove who carried it across or how it was transported.

The term "drug" means anything, other than food, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in any animal, or intended to affect the structure or any function of the body of an animal. If an article is a drug, then any and all substances or ingredients that are intended to be used as a component of that article are also considered drugs.

To determine whether a product is either "intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals," or "intended to affect the structure or any function of the body" of an animal, you should consider the product's intended use. A product's intended use is what a reasonable person would conclude the manufacturer, seller or dispenser of the product intended the product to be used for based on all the relevant information.

You can determine the intended use of a product by considering the labels and oral representations made about the product, and information from any other source which discloses its intended use. If there is no label, accompanying labeling, promotional material, advertising or other representations made about the product on a particular occasion, you may still find that the product was intended for use as a drug by looking at any other source. If other evidence establishes this intended use, such as marketing, promotion or previous labeling of the product by the manufacturer, seller or dispenser, you may consider such evidence.

A drug is "misbranded" if prior to being dispensed: one, its labeling fails to contain any required information, which includes lists of active ingredients, "adequate directions for use," and manufacturer information; two, its labeling is false or misleading in any particular way; three, the drug is a "prescription animal drug" and its

labeling lacks the statement "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian;" four, the drug is a "prescription animal drug" and it is dispensed without a prescription or other order authorized by law in the course of the veterinarian's professional practice.

A drug is "adulterated" if it is an "unsafe, new animal drug." I'll now define for you the term "unsafe" and "new animal drug."

A "new animal drug" is defined as a drug intended for use in animals, the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of animal drugs as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling thereof.

A "new animal drug" is "unsafe" and, thus, adulterated if the USFDA has not approved or conditionally approved the new animal drug application for that drug.

The indictment here charges that the first object of each conspiracy was to introduce into, or deliver for introduction into, interstate commerce drugs that were misbranded or adulterated in one or more of these ways. You need not find that either conspiracy was to introduce drugs that were each misbranded or adulterated in all of the ways I

have just described. It would be sufficient if you found beyond a reasonable doubt that for each conspiracy, a conspiracy existed to introduce drugs that were misbranded in one or more of these ways.

To assist you in determining whether that was so, I will provide the following additional definitions:

The term "adequate directions for use" means direction under which a person administering or using the drug can do so safely and for the purpose for which it was intended.

A product is a "prescription animal drug" if it is a drug intended for use in animals other than man and, because of this toxicity, or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, it is not safe for animal use except under the professional supervision of a licensed veterinarian.

A "prescription animal drug" is a drug that can either be administered by a licensed veterinarian in the course of the veterinarian's professional practice, or can be dispensed only upon a lawful written or oral order of a licensed veterinarian in the course of the veterinarian's professional practice.

A prescription, or other order authorized by law, is one issued in the usual course of professional practice by a licensed veterinarian for a legitimate medical purpose based upon a bona fide veterinarian-client/patient relationship.

Prescription animal drugs are misbranded if they are

administered by a licensed veterinarian but not in the course of his professional veterinary practice. Prescription animal drugs are also misbranded if they are administered by someone other than a veterinarian but not pursuant to a prescription or other order authorized by law, issued in the course of the veterinarian's professional practice.

To dispense a prescription drug without a prescription, or other order authorized by law, as I just defined, means to provide a person with a prescription drug to administer to an animal with no oral or written prescription or order at all; or pursuant to a prescription or order that was not issued for a legitimate medical purpose based upon a bona fide veterinarian-client/patient relationship.

The terms "label" and "labeling" have specific meaning. "Label," means any written, printed or graphic matter upon the immediate container of a product. The term "labeling" is broader than the term "label." "Labeling," means all labels, as well as any other written, printed or graphic matter that appears on any product or on any of its containers or wrappers or that accompanies the product. "Labeling" may include promotional material or literature, including package inserts, pamphlets, mailing pieces, and all other literature that supplements, explains or is textually related to the product.

It is unnecessary for the written, printed or graphic

matter to have been physically attached to the product to constitute labeling. It's also unnecessary for the written, printed or graphic material to have been shipped at the same time as or with the product to constitute "labeling." The focus is whether the written, printed or graphic matter is part of an integrated transaction to market the product.

Turning to Object Two, which is applicable to both Counts One and Two. The second object of each of the conspiracies charged in Counts One and Two is misbranding or adulteration of drugs while they were held for sale, with the intent to defraud or mislead. That offense has five elements:

One. The defendant did or caused another to do some act with respect to a product;

Two. At the time the defendant did or caused another to do the act, the product was a drug;

Three. The act caused the product to be misbranded or adulterated in at least one way;

Four. Prior to the misbranding or adulteration of the product, the product or a component of the product had moved or been shipped in interstate commerce;

And Five. The defendant had the intent to defraud or mislead.

The definitions that I gave you earlier with respect to the first object of the conspiracy applies equally here to the second object.

Object Three, applicable to Counts One and Two. The third object of each of the conspiracies charged in Counts One and Two is the receipt of misbranded or adulterated drugs after they were shipped in interstate commerce, with the intent to defraud or mislead. That offense has five elements:

One. The defendant received or caused another to receive a product in interstate commerce;

Two. At the time the defendant received or caused the receipt of that product in interstate commerce, the product was a drug;

Three. At the time the defendant received or caused the receipt of the drug in interstate commerce, the drug was misbranded or adulterated in at least one way;

Four. The defendant delivered or proffered for delivery the drug received in interstate commerce for pay or otherwise after it was received;

And Five. The defendant had the intent to defraud or mislead.

Again, the definitions I gave you earlier with respect to the first object of the conspiracy apply equally here.

Object Four, and this applies only to Count One. The fourth object of the conspiracy charged in Count One, but not in Count Two, is to do or cause the doing of an act to a drug while the drug is held for sale and after shipment in interstate commerce, which results in the drug being

adulterated or misbranded, with the intent to defraud or mislead. This offense has four elements:

One. The defendant did or caused another to do some act with respect to a product while it was held for sale;

Two. At the time the defendant did or caused another to do the act, the product was a drug;

Three. The act caused the product to be misbranded in at least one way;

Four. Prior to the product being held for sale, the product or a component of the product had moved or been shipped in interstate commerce.

For each of the objects to be considered in connection with the conspiracies charged in Counts One and Two, one of the elements is that the defendant engaged in any of those objects I described earlier with an intent to defraud or mislead.

To act "with intent to defraud" means to act with the specific intent to deceive or to cheat, ordinarily for the purpose of either causing some financial loss to another or bringing about some financial gain to oneself. The intent must be connected -- related in time, causation or logic -- to the commission of the misbranding or adulteration offense that is the subject of each charged conspiracy.

It is not necessary, however, for the government to prove that anyone was, in fact, defrauded, as long as it proves beyond a reasonable doubt that the defendant acted with the

intent to defraud.

To act with "intent to mislead," means to act with a specific intent to create a false impression by misstating, omitting or concealing material facts. It is not necessary, however, to prove that anyone was, in fact, misled, as long as it is established beyond a reasonable doubt that the defendant acted with the intent to mislead.

Intent need not be proved directly. You may infer the defendant's intent from the surrounding circumstances. You may consider any statement made or omitted by the defendant, and all other facts and circumstances in evidence which indicate state of mind.

The element of "intent to defraud or mislead" is written in the disjunctive, meaning with the word "or." Thus, you can find either that the defendant had the intent to defraud or the intent to mislead.

Intent to defraud or mislead can be demonstrated by evidence of intent to defraud or mislead consumers, state racing and drug regulators, the Food and Drug Administration, or other federal drug enforcement authorities, including U.S. Customs and Border Protection, the FBI and the DEA.

The defendant has argued that he acted in good faith. You could find that the defendant believed in good faith that he was acting properly, even if he was mistaken in that belief and, therefore, he did not act with an intent to defraud or

mislead. The burden of establishing criminal intent rests on the government. The defendant is under no burden to prove his good faith. Rather, the government must prove beyond a reasonable doubt an intent to defraud or mislead.

I just need to pause for a moment.

(Pause)

You all want to take a stretch break, or are you doing okay? You're okay? All right.

The government must prove beyond a reasonable doubt that the defendant unlawfully, willfully and knowingly entered into the conspiracy, that is, that the defendant agreed to take part in the conspiracy with knowledge of its unlawful purpose, and that he agreed to take part in the conspiracy to promote and cooperate in furtherance of one or more of its unlawful objectives.

Now, as to this element, the terms "unlawfully, willfully and knowingly" mean that you must be satisfied that in joining the conspiracy, assuming you find that the defendant did join the conspiracy or conspiracies in which he is charged, that the defendant knew what he was doing. That is, that he took the actions in question deliberately and voluntarily. The key question is whether the defendant joined the relative conspiracy with an awareness of at least some of the basic aims and purposes of the unlawful agreement.

"Unlawfully," simply means contrary to law. A

defendant need not have known that he was breaking any particular law or any particular rule, but he must have been aware of the generally unlawful nature of his acts.

An act is done "knowingly" and "willfully" if it is done deliberately and purposefully. That is, the defendant's acts must have been the product of his conscious objective, rather than the product of mistake, accident, mere negligence or some other innocent reason.

Now, knowledge is a matter of inference from the proven facts. Science has not yet devised a manner of looking into a person's mind and knowing what that person is thinking. However, you do have before you the evidence of certain acts and conversations alleged to have taken place involving the defendant or in his presence. You may consider this evidence in determining whether the government has proven beyond a reasonable doubt the defendant's knowledge of the unlawful purposes of the charged conspiracies.

It is not necessary for the government to show that a defendant was fully informed as to all the details of a conspiracy in order for you to infer knowledge on his part. To have guilty knowledge, a defendant need not have known the full extent of the conspiracy or all of the activities of all of its participants. It is not even necessary for a defendant to know every other member of a conspiracy. In fact, a defendant may only know one other member of the conspiracy and still be a

co-conspirator.

Nor is it necessary that the defendant received any monetary benefit from his participation in the conspiracy that you are considering, or had a financial stake in the outcome. However, although proof of a financial interest in the outcome of the scheme is not essential or determinative, if you find that the defendant had a financial or other interest, that is a factor you may properly consider in determining whether the defendant was a member of the conspiracy.

The duration and extent of the defendant's participation has no bearing on the issue of his guilt. He need not have joined the conspiracy from the outset. A defendant may have joined it for any purpose at any time in its progress, and he will be held responsible for all that was done before he joined and all that was done during the conspiracy's existence while he was a member.

Each member of a conspiracy may perform separate and distinct acts and may perform them at different times. Some conspirators may play major roles, while others play minor roles in the scheme. An equal role or an important role is not what the law requires. In fact, even a single act can be sufficient to make a defendant a participant in an illegal conspiracy.

However, a person's mere association with a member of a conspiracy does not make that person a member of that

conspiracy, even when that association is coupled with knowledge that a conspiracy is taking place. Mere presence at the scene of a crime, even coupled with knowledge that a crime is taking place, is not sufficient to support a conviction. In other words, knowledge, without agreement and participation, is not sufficient.

What is necessary is that a defendant participated in the conspiracy that you are considering with knowledge of its unlawful purposes and with an intent to aid in the accomplishment of its unlawful objective. It is not required that the government show that the co-conspirators also knew that they were violating some particular federal statute.

The question of a co-conspirator's intent is a question of fact that you are called upon to decide. Just as you determine any other facts at issue, the ultimate facts of knowledge and criminal intent, though subjective, may be established by circumstantial evidence based upon a person's outward manifestation, his words, his conduct, his acts and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn therefrom. Circumstantial evidence, if believed, is of no less value than direct evidence.

In sum, a defendant with an understanding of the unlawful nature of the conspiracy may have intentionally engaged, advised or assisted in the conspiracy for the purpose

of furthering an illegal undertaking. A defendant thereby becomes a knowing and willing participant in the unlawful agreement, that is to say, he becomes a conspirator.

A conspiracy, once formed, is presumed to continue until its objective is accomplished or until there is some affirmative act of termination by its members. So, too, once a person is found to be a participant in the conspiracy, that person is presumed to continue being a participant in the venture until the venture is terminated, unless it is shown by some affirmative proof that the person withdrew and disassociated himself from it.

The third element of each conspiracy charge set forth in each of Counts One and Two is the requirement of an overt act. To sustain its burden of proof, the government must show beyond a reasonable doubt that at least one overt act was committed in furtherance of the conspiracy that you are considering by at least one of the co-conspirators, not necessarily the defendant.

The purpose of the overt act requirement is that there must have been something more than a mere agreement; some overt step or action must have been taken by at least one of the conspirators in furtherance of the conspiracy.

In order for the government to satisfy the overt act requirement, it is not necessary for the government to prove any of the overt acts alleged in the indictment. Indeed, you

might find that overt acts were committed which were not alleged at all in the indictment. In short, it is sufficient for the government to show that the defendant, or one of his alleged co-conspirators, knowingly committed any overt act in furtherance of the conspiracy during the life of the conspiracy.

In that regard, you should bear in mind that you need not reach a unanimous agreement on whether a particular overt act was committed in furtherance of the conspiracy. You just need to all agree that at least one overt act was so committed.

In addition, you should bear in mind that the overt act, standing alone, may be an innocent, lawful act. Frequently, however, an innocent act sheds its harmless character if it is step in carrying out, promoting or aiding or assisting a conspiratorial scheme. You are, therefore, instructed that the overt act does not have to be an act which, in and of itself, is criminal or an objective of the conspiracy.

In some cases, the law that the defendant is charged with breaking actually covers two separate crimes; one is more serious than the second, and the second is generally called a "lesser-included offense." The indictment in this case charges the defendant with participating in two separate conspiracies to adulterate and misbrand drugs with the intent to defraud or mislead, and I have explained to you the elements that the

government must prove beyond a reasonable doubt before you may convict the defendant of those crimes.

You must first consider whether the government has satisfied its burden of proof as to all elements of conspiracy to commit drug adulteration and misbranding, other than intent to defraud or mislead. If you find that the government has done so, you must render a verdict of guilty.

If you find the defendant guilty, you must then proceed to determine whether the government has proven beyond a reasonable doubt that the defendant committed that offense with the intent to defraud or mislead. If the government has satisfied its burden as to all of the elements, including intent to defraud or mislead, you must select "yes" on the verdict form that I will give you, which we will discuss in a few minutes.

With respect only to the conspiracy to violate the drug misbranding and drug adulteration laws charged in Count Two of the indictment, the indictment further charges that the defendant continued to commit that offense after he was released on bail, in violation of Section 3147 of Title 18 of the United States Code. The government and the defendants have agreed, through a stipulation that is in evidence in this case, that the defendant was released on bail in this case on October 28th, 2019.

Therefore, if you find the defendant guilty of the

offense charged in Count Two, you must make one additional finding, whether the government has proven beyond a reasonable doubt that the defendant continued to commit that offense after October 28th, 2019. There's a place on the verdict form you will receive where you can record your finding on this question.

In your consideration of whether the defendant acted knowingly with respect to any objective of the conspiracy charged in Count One or Count Two, you may consider whether the defendant deliberately closed his eyes to what otherwise would have been obvious. If you find beyond a reasonable doubt that the defendant acted with a conscious purpose to avoid learning the truth, then the requirement that he acted knowingly may be satisfied.

However, guilty knowledge may not be established by demonstrating that the defendant was merely negligent, foolish, or mistaken. One may not willfully and intentionally remain ignorant of a fact material and important to his conduct to escape the consequences of the criminal law.

If you find beyond a reasonable doubt that the defendant intentionally participated in the conspiracy, but that the defendant deliberately and consciously avoided confirming certain facts about the specific objective of the conspiracy, then such "conscious avoidance" may support a finding that the government has proven the defendant's

knowledge of the objectives or goals of the conspiracy.

Keep in mind, you cannot rely on conscious avoidance to support a finding that the defendant intentionally joined a conspiracy. Conscious avoidance may apply only to a defendant's knowledge of the specific objectives of a conspiracy, not to whether the defendant joined that conspiracy in the first place. It is logically impossible for the defendant to intend and agree to join a conspiracy if he does not actually know that it exists.

If you find that the defendant was aware of a high probability that a fact regarding the objective of a conspiracy was so, and that the defendant acted deliberately to avoid confirming that fact, you may find that the defendant had knowledge of the fact. However, if you find that the defendant actually believed the fact was not so, then he may not have acted knowingly with respect to the fact.

When people enter into a conspiracy to accomplish an unlawful end, they become agents or partners of one another in carrying out that conspiracy.

In determining the factual issues before you, you may consider against the defendant any acts or statements made by any of the people who you find, under the standards I've already described, to have been his co-conspirators, even though such acts or statements were not made in his presence or were made without his knowledge.

The indictment alleges that the conspiracy charged in Count One existed from in or about 2016 through in or about March of 2020, and that the conspiracy charged in Count Two existed from in or about 2002 through in or about March of 2020. It is not essential that the government prove that the conspiracy started and ended at these specific times.

The government is not required to prove that the conduct took place on the precise dates alleged in the indictment. The law only requires a substantial similarity between the dates alleged in the indictment and the dates established through evidence at trial.

In addition to all of the elements of each of the charges that I've just described for you, you must decide separately with respect to each of these counts whether any act in furtherance of the crime you are considering occurred within the Southern District of New York. The Southern District of New York includes the counties of Manhattan, The Bronx, Westchester, Dutches, Putnam, Orange, Sullivan and Rockland Counties.

Venue is proven if any act in furtherance of the crimes you are considering occurred in the Southern District of New York, regardless of whether it was the act of the defendant or anyone else.

I should note on this issue, and this issue alone, the government need not prove venue beyond a reasonable doubt but

only by a mere preponderance of the evidence. A preponderance of the evidence means that the government must prove that it is more likely than not that any acts in furtherance of a given crime occurred in the Southern District of New York.

In deciding whether or not the government has met its burden of proof, you may consider both direct and circumstantial evidence.

Direct evidence is evidence that proves a disputed fact directly. For example, when a witness testifies to what he or she saw, heard or observed, that is called direct evidence.

Circumstantial evidence is evidence that tends to prove a disputed fact by proof of other facts. To give a simple example, suppose that when you came into the courthouse today, the sun was shining and it was a nice day, but the courtroom blinds were drawn and you could not look outside. Then, later, as you were sitting here, someone walked in with a dripping wet umbrella, and soon after that, someone else walked in with a dripping wet raincoat.

Now, on our assumed facts, you cannot look outside the courtroom and you cannot see whether or not it is raining; so you have no direct evidence of that fact. But, on the combination of the facts about the umbrella and the raincoat, it would be reasonable for you to infer that it had begun to rain.

And that is all there is to circumstantial evidence. Using your reason and experience, you infer from established facts the existence or the nonexistence of some other facts. Please note, however, that is it is not a matter of speculation or guess. It is a matter of logical inference.

The law makes no distinction between direct and circumstantial evidence, and circumstantial evidence is of no less value than direct evidence. You may consider either or both and may give them such weight as you conclude is warranted.

During the trial, you have heard the attorneys use the term "inference," and in their arguments they have asked you to infer on the basis of your reason, experience and common sense, from one or more established facts, the existence of some other fact.

An inference is not a suspicion or a guess. It is a reasoned, logical decision to conclude that a disputed fact exists on the basis of another fact that you know exists.

There are times when different inferences may be drawn from facts, whether proven by direct or circumstantial evidence. The government asks you to draw one set of inferences, while the defendant asks you to draw another. It is for you, and you alone, to decide what inferences you will draw.

The process of drawing inferences from facts in

evidence is not a matter of guesswork or speculation. An inference is a deduction or a conclusion that you, the jury, are permitted, but not required, to draw from the facts that have been established by either direct or circumstantial evidence. In drawing inferences, you should exercise your common sense.

So while you are considering the evidence presented to you, you are permitted to draw, from the facts that you find to be proven, such reasonable inferences as would be justified in light of your experience.

Here again, let me remind you that whether based on direct or circumstantial evidence, or on the logical, reasonable inferences drawn from such evidence, you must be satisfied of the guilt of the defendant beyond a reasonable doubt before you may convict.

Now, during the trial, you have heard evidence in the form of stipulations. A stipulation of fact is an agreement among the parties that a certain fact is true. You should regard such acts as true. A stipulation of testimony is an agreement among the parties that if called as a witness, the person would have given certain testimony. You must accept as true the fact that the witness would have given that testimony. It is for you, however, to determine the effect to be given to that testimony.

It must be clear to you by now that the government and

the defendants are asking you to draw very different conclusions about various factual issues in this case. Deciding these issues will involve making judgments about the testimony of the witnesses you have listened to and observed. In making these judgments, you should carefully scrutinize all of the testimony of each witness, the circumstances under which each witness testified, and any other matter in evidence that may help you decide the truth and the importance of each witness' testimony.

Your decision whether or not to believe a witness may depend on how that witness impressed you. How did the witness appear? Was the witness candid, frank and forthright; or, did the witness seem to be evasive or suspect in some way? How did the way the witness testified on direct examination compare with how the witness testified on cross-examination? Was the witness consistent or contradictory? Did the witness appear to know what he or she was talking about? Did the witness strike you as someone who was trying to report his or her knowledge accurately? These are examples of the kind of common sense questions you should ask yourself in deciding whether a witness is or is not truthful.

How much you choose to believe a witness may also be influenced by the witness' bias. Does the witness have a relationship with the government or the defendant that may affect how he or she testified? Does the witness have some

incentive, loyalty or motive that might cause him or her to shade the truth? Does the witness have some bias, prejudice or hostility that may cause the witness to give you something other than a completely accurate account of the facts he or she testified to?

You should also consider whether a witness had the opportunity to observe the facts he or she testified about. Also, you should consider whether the witness' recollection of the facts stands up in light of the other evidence in the case.

In other words, what you should try to do in deciding credibility is to size up the person just as you would in any important matter where you are trying to decide if a person is being truthful, straightforward and accurate in his or her recollection.

(Continued on next page)

THE COURT: If a person is shown to have knowingly testified falsely concerning any important or material matter, you have a right to distrust the testimony of such an individual concerning other matters. You may reject all of the testimony of that witness or give it such weight or credibility as you think it deserves.

But the issue of credibility also need not be decided in an all-or-nothing fashion. Even if you find that a witness testified falsely in one part, you still may accept his testimony in other parts, or you may disregard all of it. That is a determination entirely for you, the jury.

You have heard testimony of law enforcement officials and of employees of the government. The fact that a witness may be employed by the government as a law enforcement official or as an employee of the government does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness. In this context, defense counsel is allowed to try to attack the credibility of such a witness on the grounds that his or her testimony may be colored by a personal or professional interest in the outcome of the case.

It is your decision, after reviewing all of the evidence, whether to accept the testimony of law enforcement or government employee witnesses and to give that testimony whatever weight, if any, you find it deserves.

You have heard testimony from what we call expert witnesses. An expert is someone who by education or experience has acquired learning or experience in a science or a specialized area of knowledge. Such a witness is permitted to give his or her opinions as to relevant matters in which he or she professes to be expert and give his or her reasons for those opinions. Expert testimony is presented to you on the theory that someone who is experienced in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

Now your role in judging credibility applies to experts as well as to other witnesses. You should consider the expert opinions that were received in evidence in this case and give them as much or as little weight as you think they deserve. If you should decide that the opinion of an expert was not based on sufficient education or experience or on sufficient data, or if you should conclude that the trustworthiness or credibility of an expert is questionable for any reason, or if the opinion of the expert was outweighed, in your judgment, by other evidence in the case, then you might disregard the opinion of the expert entirely or in part.

On the other hand, if you find that the opinion of an expert is based on sufficient data, education and experience, and the other evidence does not give you reason to doubt the expert's conclusions, you would be justified in placing great

reliance on his or her testimony.

You have heard evidence during the trial that witnesses have discussed the facts of the case and their testimony with lawyers before the witness appeared in court.

Although you may consider that fact when you are evaluating a witness's credibility, I should tell you that there is nothing either unusual or improper about a witness meeting with lawyers before testifying so that the witness can be aware of the subjects he or she will be questioned about, focus on those subjects, and have the opportunity to review relevant exhibits before being questioned about them. Such consultation helps conserve your time and the Court's time. In fact, it would be unusual for a lawyer to call a witness without such consultation.

The weight you give to the fact or nature of the witness's preparation for his or her testimony and what inferences you draw from such preparation are matters completely within your discretion.

Some of the people who may have been involved in the events leading to this trial are not on trial. This does not matter. There is no requirement that all members of a conspiracy be charged and prosecuted or tried together in the same proceeding.

You may not draw any inference, favorable or unfavorable, towards the government or the defendant from the

fact that certain persons other than the defendant were not named as defendants in this indictment. Nor may you speculate as to the reasons why other persons are not on trial. Those matters are wholly outside your concern and have no bearing on your function as jurors.

Whether a person should be named as a co-conspirator or indicted as a defendant in this case or another separate case is a matter within the sole discretion of the United States Attorney and the grand jury. Therefore, you may not consider it in any way in reaching your verdict as to the defendant.

As you know, we began this trial with another defendant charged in this case, Lisa Giannelli. Last Tuesday, I instructed you that she was no longer part of this trial, and you were no longer being asked to render a verdict with respect to Ms. Giannelli. I instructed you at the time, and I instruct you again now, please do not concern yourselves with why Ms. Giannelli is no longer part of this trial. Do not speculate about the reasons why. Neither her presence at the beginning of the trial, nor her absence from the remainder of the trial, may influence your verdict as to the defendant, Dr. Fishman, in any way. You may not draw any negative inference about him on this basis. You must base your verdict solely on the evidence or lack of evidence against Dr. Fishman.

You have heard testimony from a witness who testified

that he was involved in criminal conduct, and who subsequently pled guilty to his criminal conduct pursuant to what is called a "cooperation agreement" with the government. You have also heard from two witnesses who testified that they were involved in potentially criminal conduct, and who subsequently entered into what is called a "non-prosecution agreement" with the government.

The government frequently relies on testimony of cooperating witnesses and other witnesses who have admitted to participating in crimes. The government must take its witnesses as it finds them and frequently uses such testimony in criminal prosecutions because otherwise it would be difficult or impossible to detect and prosecute wrongdoers.

The testimony of such witnesses is properly considered by the jury. If these witnesses could not be used, there would be many cases in which there was real guilt and conviction should be had, but in which convictions would be unobtainable. For these reasons, the law allows the use of such witness testimony. Indeed, it is the law in federal courts that the testimony of a single cooperating witness may be enough in itself for conviction, if the jury believes that the testimony establishes guilt beyond a reasonable doubt.

Because of the possibility interest a cooperating witness may have in testifying, the cooperating witness's testimony should be scrutinized with care and caution. The

fact that a witness is a cooperating witness can be considered by you as bearing upon his or her credibility. It does not follow, however, that simply because a person has admitted to participating in one or more crimes, that he or she is incapable of giving truthful testimony.

Like the testimony of any other witness, cooperating witness testimony should be given the weight that it deserves in light of the facts and circumstances before you, taking into account the witness's demeanor, candor, the strength and accuracy of the witness's recollection, background, and the extent to which his or her testimony is or is not corroborated by other evidence in the case.

I must caution you that it is of no concern of yours why the government made an agreement with a particular witness. Your sole concern is whether a witness has given truthful testimony here in this courtroom before you.

In evaluating the testimony of a cooperating witness, you should ask yourselves whether this cooperating witness would benefit more by lying or by telling the truth. Was his or her testimony made up in any way because he or she believed or hoped that he or she would somehow receive favorable treatment by testifying falsely? Or did he or she believe that his or her interests would be best served by testifying truthfully? If you believe that the witness was motivated by hopes of personal gain, was the motivation one that would cause

him or her to lie, or was it one that would cause him or her to tell the truth? Did this motivation color the witness's testimony?

If you find that the testimony was false, you may reject it. If, however, after a cautious and careful examination of the cooperating witness's testimony and demeanor upon the witness stand, you are satisfied that the witness told the truth, you may accept it as credible and act upon it accordingly. As with all witnesses, you may accept some but not all of a witness's testimony and give it whatever weight you deem appropriate.

You have heard the testimony of a witness who has testified under a grant of immunity from this Court. What this means is that the testimony of the witness may not be used against him in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the immunity order of this Court.

You are instructed that the government is entitled to call as a witness a person who has been granted immunity by order of this Court, and that you may convict a defendant on the basis such a witness's testimony alone if you find that the testimony proves the defendant's guilt beyond a reasonable doubt.

However, the testimony of a witness who has been granted immunity should be examined by you with greater care

than the testimony of an ordinary witness. You should scrutinize it closely to determine whether or not it is colored in such a way as to place guilt upon the defendant in order to further the witness's own interests; for, such a witness, confronted with the realization that he can win his own freedom by helping to convict another, has a motive to falsify his testimony.

Such testimony should be scrutinized by you with great care, and you should act upon it with caution. If you believe it to be true, and determine to accept the testimony, you may give it such weight, if any, as you believe it deserves.

You have heard testimony about certain evidence that was seized in searches of places, vehicles, and electronic devices, and through the use of wiretaps on the defendant's cellular telephone. Evidence obtained from those searches was properly admitted in this case and may be considered by you. Whether you approve or disapprove of how the evidence was obtained should not enter into your deliberations, because I now instruct you that the government's use of this evidence is entirely lawful.

Similarly, there is evidence concerning an individual's location based on the location of cellar phones. Evidence obtained in this manner was properly admitted in this case and may be considered by you. Whether you approve or disapprove of how the evidence was obtained should not enter

into your deliberations, because I now instruct you that the government's use of this evidence is entirely lawful.

You must, therefore, regardless of your personal opinions, give this evidence full consideration along with all the other evidence in this case in determining whether the government has proven the guilt of the defendant beyond a reasonable doubt.

There has been evidence that the defendant made statements to law enforcement authorities. Evidence of these statements was properly admitted in this case and may properly be considered by you. You are to give the evidence of such statements such weight as you feel it deserves in light of all of the evidence.

Whether you approve or disapprove of the use of these statements may not enter into your deliberations. I instruct you that no one's rights were violated, and that the government's use of this evidence is entirely lawful.

As you know, the defendant did not testify in this case. Under our Constitution, a defendant has no obligation to testify or present any evidence, because it is the government's burden to prove the defendant's guilt beyond a reasonable doubt. That burden remains with the government throughout the trial and it never shifts to a defendant. A defendant is never required to prove that he is innocent. You may not attach any significance to the fact that the defendant did not testify.

You may not draw any inference against the defendant because he did not take the witness stand. You may not speculate as to why he did not testify, and you may not consider this against him in any way in your deliberations.

The government has introduced evidence in the form of audio recordings and transcripts. If you wish to hear any of the recordings again, or see any of the transcripts of those recordings, they will be made available to you during your deliberations.

We have among the exhibits that were received in evidence some documents that are redacted. "Redacted" means that part of the document or the tape was taken out. You are to concern yourself only with the parts of the item that have been admitted into evidence. You should not consider any possible reason why the other parts of it have been deleted.

You have seen evidence in which the defendant made statements in which he claimed that his conduct was consistent with innocence and not with guilt. The government claims that these statements in which the defendant exculpated himself are false.

If you find that the defendant gave a false statement in order to divert suspicion, you may infer that the defendant believed he was guilty. You may not, however, infer on the basis of this alone that the defendant is, in fact, guilty of the crimes for which the defendant is charged.

Whether or not the evidence as to the defendant's statements shows that the defendant believed he was guilty, and the significance, if any, to be attached to any such evidence, are matters for you, the jury, to decide.

Now different judges have different methods of selecting the foreperson on the jury. I'm instructing you now that Juror No. 1, Ms. Barry, will be the foreperson of the jury, unless for any reason she prefers not to act in that capacity. In that event, your first order of business will be to elect a different juror as the foreperson. Please, after you retire to deliberate, send me a note, signed and dated, identifying the foreperson. The foreperson will send out any notes, and when the jury has reached a verdict, he or she will notify the marshal that the jury has reached a verdict, and when you come into open court, the foreperson will be asked to state what the verdict is. Again, notes should be signed and should include the date and the time when they are sent. They should also be as clear and precise as possible. Any notes from you, the jury, will become part of the record in this case, so please be as clear and specific as you can be in any notes that you send.

You are about to go into the jury room and begin your deliberations. If during those deliberations you want to see or hear any of the exhibits, upon request they will be sent to you in the jury room or you will be brought back into the

courtroom to examine them. If you want any of the testimony read, that also can be done. Please, though, remember it is not always easy to locate what you might want, so be as specific as you possibly can in requesting exhibits or portions of testimony that you may want.

Your requests for exhibits or testimony, in fact, any communications with the Court, should be made to me in writing, signed by your foreperson, and given to one of the marshals. I will respond to any questions or requests you have as promptly as possible, either in writing or by having you return to the courtroom so I can speak with you in person. In any event, do not tell me or anyone else how the jury stands on the issue of the defendant's guilt until after a unanimous verdict is reached.

Now during this trial I permitted you to take notes. Those notes are to be used solely to assist you and are not to substitute for your recollection of the evidence in the case. The fact that a particular juror has taken notes entitles that juror's view to no greater weight than those of any other juror, and your notes are not to be shown to any other juror during deliberations. If, during your deliberations, you have any doubt as to any of the testimony, you will be permitted to request that the official transcript from the trial which was made of these proceedings be read to you.

Under your oath as jurors, you are not to be swayed by

sympathy. You are to be guided solely by the evidence in this case, and the crucial question that you must ask yourself as you sift through the evidence is: Has the government proven the guilt of the defendant beyond a reasonable doubt with respect to each of the elements of each of the offenses charged?

It is for you alone to decide whether the government has proven beyond a reasonable doubt that the defendant is guilty of each crime for which he is charged solely on the basis of the evidence or lack of evidence and subject to the law as I have charged you. It must be clear to you that once you let fear, prejudice, bias, or sympathy interfere with your thinking, there is a risk that you will not arrive at a true and a just verdict.

If the government has failed to establish the defendant's guilt beyond a reasonable doubt, you must acquit him. But, on the other hand, if you should find that the government has met its burden of proving the defendant's guilt beyond a reasonable doubt, you should not hesitate because of sympathy or any other reason to render a verdict of guilty.

The question of possible punishment of the defendant is of no concern to you, ladies and gentlemen of the jury, and should not in any sense enter into or influence your deliberations. The duty of imposing sentence rests exclusively upon the Court.

Your function is to weigh the evidence in the case and to determine whether or not the government has proved that the defendant is guilty beyond a reasonable doubt solely upon the basis of such evidence.

Under your oath as jurors, you cannot allow consideration of the punishment that must be imposed on the defendant, if he is convicted, to influence your verdict or in any sense enter into your deliberations.

Now I have prepared a verdict form for you to use in recording your decision. After you have reached a decision, the foreperson should fill in the verdict sheet, sign it, and note the date and time. The foreperson should then give the note to the marshal who will be outside your door, stating simply that you have reached a verdict. Do not specify what the verdict is in your note and do not give the verdict sheet to the marshal. Instead, the foreperson should retain the verdict sheet and hand it to us in open court when you are then called in.

I will stress again that each of you must be in agreement with the verdict that is announced in court. Once your verdict is announced by your foreperson in open court and officially recorded, it cannot be revoked.

Your function now is to weigh the evidence in this case and to determine whether the government has proven the guilt of the defendant beyond a reasonable doubt with respect

to the charges of the indictment.

You must base your verdict solely on the evidence or the lack of evidence, and these instructions as to the law, and you are obliged under your oath as jurors to follow the law as I have instructed you, whether you agree or disagree with the particular law in question.

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to it. Your verdict, whether guilty or not guilty, must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can possibly do so without violence to individual judgment. Each of you must decide the case for himself or herself, but do so only after an impartial discussion and consideration of all the evidence in the case with your fellow jurors.

As you deliberate, please listen to the opinions of your fellow jurors and ask for an opportunity to express your own views if you wish to be heard.

In the course of your deliberations, do not hesitate to reexamine your own views and change an opinion if you're convinced it is erroneous. But do not surrender your honest convictions as to the weight or effect of evidence solely because of the opinion of your fellow jurors. Remember,

please, at all times you are not partisans. You are judges, judges of the facts. Your sole interest is to seek the truth from the evidence in this case.

If you are divided, do not report how the vote stands, and if you have reached a verdict, do not report what your verdict is until you are asked in open court.

So in conclusion, ladies and gentlemen, I'm sure that if you listen to the views of your fellow jurors and if you apply your own common sense, you will reach a fair verdict here.

Remember that your verdict must be rendered without fear, without favor, and without prejudice and without sympathy.

Finally, I say this not because I think it is necessary but because it is the custom in this courthouse to say this: You should, please, during your deliberations, treat other with courtesy and respect.

So at this point, members of the jury, I ask for your patience just for a few moments longer. It's necessary for me to spend a few moments with counsel and the reporter at sidebar. I will ask you to patiently remain in the jury box without speaking to each other and we'll return to you in just a moment to submit the case to you. And I thank you.

(At sidebar)

THE COURT: All right. As you know, the purpose for

our convening here is for you to note whatever you would like for the record, if anything.

MS. MORTAZAVI: Nothing from the government.

MR. FERNICH: Just one of substance. In the back and forth between myself and Mr. Chow, the placement of this connection language, what we called the nexus requirement changed. As it stands, inadvertently, intent to defraud and intent to mislead are separated now such that the language only applies, as written and read, to intent to defraud. And obviously I want to make it as benign as possible, so I suggest that with respect to charge 11, the connection requirement I described applies to both "intent to defraud" and "intent to mislead."

THE COURT: Ms. Mortazavi, that sounds very reasonable.

MS. MORTAZAVI: It does. I would like to review the instruction.

MR. FERNICH: Take your time. I just noticed it myself.

MS. MORTAZAVI: That's fine, your Honor.

THE COURT: Thank you.

Anything else for the record?

MR. FERNICH: No. That was a marathon.

THE COURT: Yeah. Okay.

(In open court)

THE COURT: All right. Let me make one clarification, if I may, if you turn back to charge 11, please. It's convenient that you all have a copy.

I simply point out to you that the connection requirement that I described in charge 11 applies equally both to the intent to defraud and the intent to mislead.

All right?

Now before you retire to the jury room, I must excuse our alternate jurors with the thanks of the Court.

The alternate jurors are Jurors Nos. 13 through 16. So I excuse you as I say, very much with the thanks of the Court. You have been very attentive, very patient, and I'm sorry that you will miss the experience of deliberating with the jury, but the law provides for a jury of twelve persons in this case.

Before the rest of the jury retires into the jury room, if you have any clothing or items in the jury room, we're going to ask you, being accompanied by one of our colleagues in a moment, to go down to that jury room and pick them up and to withdraw from the jury room before any deliberations start.

For the next few days though, I will ask you, the jurors, the four jurors who I'm excusing, to please refrain from discussing the case with anyone or conducting any research about anything that you have heard during this trial or about the trial itself. I'm asking you that because in the event

that one of our jurors is unable to complete the deliberation process, you may be called back to join the jury for deliberations.

So please, don't read about the case, don't discuss it with anyone, not with your family, friends, anyone whatsoever, and I promise that Ms. Dempsey, whom you've all met and been spending some time with, will let you know when we have a verdict in the case, and at that point you're free to discuss the case with anyone whom you wish.

All right. So our alternates are excused very much with the thanks of the Court and all the parties. You can leave your notebooks on the chairs and the transcript binders, if they are there. Take home with you your personal belongings, nothing related to the case.

Give us a moment.

(Alternate jurors excused from the courtroom)

THE COURT: You may be seated.

So you are about to retire momentarily to deliberate, and I just want to tell you a few logistical details before you do.

The schedule for your deliberations is entirely up to you. We have been beginning each day at 9:30. That seems to be a reasonable starting time. But if there is a reason that you agree among yourselves to a different starting time on a particular day for a particular reason, that's entirely up to

you.

We have been concluding each day about 4:30, 5:00, but you are free to deliberate until later in the day if you wish to do so.

One other reminder, whatever time you all agree that you're going to begin your deliberations each morning, please wait until every juror is present. You cannot and should not talk about the case among yourselves unless all of the jurors are in attendance.

All right. Anything else from anyone?

MS. MORTAZAVI: Not from the government.

THE COURT: All right. Then at this point may I ask our court officer to please come forward so that Ms. Dempsey can administer the marshal oath.

(Marshal sworn)

THE COURT: All right. The court officer will accompany you down to the deliberation room. I ask you to wait until Mr. Dempsey can confirm with Mr. Lee that the alternates have cleared the room.

From this point forward, you will be in the care of our marshal's service. Ms. Dempsey will no longer be with you. As I said during the instructions, any notes that you have should be -- you should let the court security officer know that you have a note for me, the first of which should be to let us know who your foreperson is.

I just remind the jurors while we're waiting, when you leave each day do not talk about the case with your family or your friends and do not do any research on the case, and deliberate solely on basis of the evidence that you heard here in court.

I remind you, too, don't take your notes home in the evening, leave them in the jury room.

All right, ladies and gentlemen, the room is cleared downstairs so you can retire to the deliberation room. Thank you.

(Jury retired to deliberate, 4:40 p.m.)

(Jury not present)

THE COURT: Ladies and gentlemen, I ask you to -- obviously you have been through this drill. You need to stay in the courthouse or close by so that if we get jury notes you will all come back into the courtroom and we'll talk about the note. So I know not everybody has an office close by, but you'll have to make the necessary arrangements.

Is there anything else for the record at this time?

MR. ADAMS: Nothing here, your Honor.

THE COURT: Thank you, Mr. Adams.

MR. SERCARZ: Nothing by the defendant, your Honor.

THE COURT: Thank you, Mr. Sercarz.

All right. We are adjourned then for the time being.

(Recess taken and trial adjourned to February 2, 2022)